SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 793

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

vs.

WARNER HOLDING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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A [Caption omitted.]

1 In The District Court of the United States, for the District of Minnesota, Fourth Division

No. 884—Civil Action

PRENTISS M. BROWN, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PLAINTIFF

vs.

WARNER HOLDING COMPANY, A CORPORATION, DEFENDANT

Order substituting Chester Bowles, Administrator, Office of Price Administration, in the place of Prentiss M. Brown, and granting Plaintiff leave to file Amended and Supplemental Complaint Filed Nov. 30, 1943

The above-entitled action came before the undersigned, Judge of the above-named Court, on the 27th day of November 1943, for hearing on the motion of the plaintiff for an Order substituting Chester Bowles, Administrator, Office of Price Administration, as plaintiff in place of Prentiss M. Brown, permitting plaintiff to serve and file an Amended and Supplemental Complaint, permitting plaintiff to examine the books of defendant and for a pre-trial conference. Ralph M. McCareins and Arnold Karlins appeared as counsel for plaintiff in support of said motion and R. H. Fryberger and M. R. Keith appeared as counsel for defendant in opposition thereto.

After hearing the argument and being advised in the premises, it is ordered,

1. That Chester Bowles, Administrator, Office of Price Administration, be substituted as plaintiff in this action in place of Prentiss M. Brown, and that the title of this action be amended accordingly;

2. That leave is hereby granted to the plaintiff to file the Amended and Supplemental Complaint placed before the Court at the hearing of this motion, the copy thereof served on defendant prior to the hearing of this motion to stand as served,
2 and the defendant to have ten days from the date hereof to answer said Amended and Supplemental Complaint;

3. That said motion with respect to plaintiff's request for an Order permitting plaintiff to inspect and examine the books of defendant is denied for failure to conform to Rule 34 of the Rules of Civil Procedure, without prejudice to a second application by the plaintiff to the Court for an examination of the books and records of defendant;

4. A ruling on said motion with respect to the pre-trial con-

ference therein requested is deferred until a ruling has been made on a second application of the plaintiff for an examination of the books and records of defendant.

Dated: 11/30/43.

MATTHEW M. JOYCE,
United States District Judge.

[File endorsement omitted.]

In The District Court of the United States for the District of Minnesota, Fourth Division

[Title omitted.]

Amended and supplemental complaint

Filed Nov. 27, 1943

1. Jurisdiction of this action is conferred upon the Court by Section 205 (c) of the Emergency Price Control Act of 1942 (56 Stat. 23; Tit. 50 U. S. C. A. App. Sec. 901 (1942)), as amended (Pub. Law No. 729, 77th Cong. 2nd Sess. C 578) (Pub. Law No. 151, 78th Cong. 1st Sess., July 16, 1943), hereinafter called the Act. Plaintiff brings this action under Section 205 (a) of the Act to enforce compliance with Section 4 (a) thereof.

2. At all times herein mentioned defendant was and is a corporation, organized under the laws of South Dakota and licensed to do business in Minnesota, with its office and principal place of business in Minneapolis, Minnesota.

3. On and after November 1, 1942, defendant, as owner and lessor, leased and let to tenants housing accommodations in the apartment buildings in the City of Minneapolis, Minnesota, known and numbered as follows:

Belvedere Apartments, 2896 James Avenue South.
Martinique Apartments, 2880 James Avenue South.
Vine Hall Apartments, 1412 LaSalle Avenue South.
125 Oak Grove Apartments, 125 Oak Grove Street.
El Capitan Apartments, 3210 Girard Avenue South.
Dupont Court Apartments, 1101–1105 West 28th Street.
Emerson Court Apartments, 1115–1125 West 28th Street.
Granada Apartments, 1456 Lagoon Avenue.

The housing accommodations in said apartment buildings consisted of rooms arranged as dwelling units, said buildings containing approximately 280 of such dwelling units.

4. Defendant, in the operation of said apartment buildings and in the collection of rents from its tenants thereof, has engaged and is about to engage in acts and practices which constitute and which will constitute a violation of Section 4 (a) of the Act in

that defendant has violated and is attempting to violate a regulation of the Office of Price Administration, to wit: Maximum Rent Regulation 53 (7 F. R. 8596) re-designated as Rent Regulation for Housing (8 F. R. 7322).

5. At all times on and after November 1, 1942, said Rent Regulation has established maximum rents for the use and occupancy of the housing accommodations owned and operated by defendant as aforesaid, and has prohibited defendant from demanding or receiving, and from offering, attempting or agreeing to demand or receive, rent for the use and occupancy of said housing accommodations in excess of the maximum rents established therefor by said Regulation.

6. On and after November 1, 1942, defendant, in violation of said Regulation and Section 4 (a) of the Act, demanded and received rents for the use and occupancy of housing accommodations in amounts in excess of the maximum established therefor by said Regulation. Attached hereto marked Exhibit A, and hereby made a part hereof, is a schedule setting forth a description of housing accommodations, the maximum rents established therefor by said Regulation, the rents demanded and received by defendant in violation of said Regulation for the use and occupancy of said housing accommodations, and the date and number of violations of said Regulation resulting therefrom.

7. On and for some time prior to June 29, 1943, defendant had knowledge of amounts it had unlawfully collected from tenants in excess of the maximum rents established by said Regulation and of the persons from whom such amounts had been so collected. Defendant has failed and refused and still fails and refuses to tender to the persons so known by defendant to be entitled thereto, a refund of the amounts unlawfully collected by defendant in excess of the maximum permitted by said Regulation.

8. At all times on and after November 1, 1942 said Regulation required defendant to file with the Area Rent Office at Minneapolis, Minnesota, on or before December 15, 1942, or within thirty days after the property was first rented, a registration statement for each housing accommodation rented or offered for rent by defendant, and to specify in said registration statement the maximum rent provided by said Regulation for the dwelling unit described therein. With respect to housing accommodations rented on March 1, 1942, defendant was required by said Regulation to set forth in said registration statement as the maximum rent for such housing accommodations the rent for such accommodations on that date. At all times herein mentioned, it was a practice of defendant in the operation of the said apartment buildings to rent dwelling units therein to tenants under agreements providing for a monthly gross rent and containing a provision described in said agreements as a "discount clause" and providing for a

"discount" on payment of the rent within a stipulated time after its due date, said agreements being in form similar to the lease marked Exhibit B, which is attached hereto made a part hereof for the purpose of showing the form of said agreements. With respect to housing accommodations rented by defendant on March 1, 1942 under rental agreements similar to Exhibit B, defendant,

in violation of said provisions of said Regulation and Section 4 (a) of the Act, filed registration statements with said Area Rent Office showing only the gross rent stated in the leasing agreements and failed and refused and still fails and refuses to set forth in said registration statements, the net rent payable within the discount period or the provision for a "discount." Defendant's practice of filing registration statements without showing the net rent or the "discount" provision prevailing on the base date prevents the use of the registration statement as an accurate source of information for ascertainment of the maximum rent in the administration of said Regulation, and defendant, by the use of said practice, has evaded and is attempting to evade the provisions of said Regulation establishing maximum rents.

9. At all times on and after November 1, 1942, said Regulation has provided that so long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal, or exclusion from possession, except on the grounds and in the manner stated in said Regulation. Defendant, in violation of the provisions of said Regulation with respect to the eviction of tenants and the establishment of maximum rents, and in violation of Section 4 (a) of the Act, has made demands on tenants, in form the same as or similar to the letter a copy of which is attached hereto marked Exhibit C and hereby made a part hereof, wherein defendant has undertaken and attempted, by conditioning its demands on an assumed unconstitutionality of the Emergency Price Control Act of 1942 and said Regulation, to impose on tenants a choice of vacating the housing accommodations rented from defendant or continuing their occupancy by becoming obligated to defendant to pay rent and penalties in excess of the maximum rent established by said Regulation.

Wherefore, the plaintiff demands:

1. A preliminary and permanent injunction enjoining defendant, its agents, servants, employees and all persons in active concert or participation with it from, directly or indirectly,

(a) demanding or receiving, or attempting to demand or receive, rent for any housing accommodations in excess of the maximum rent established therefor by any Regulation or Order of the Office of Price Administration;

(b) evicting or attempting to evict tenants of defendant from any housing accommodations in violation of any Regulation or Order of the Office of Price Administration;

(c) making any demand on any tenant of housing accommodations in which demand defendant undertakes or attempts to impose an obligation on the tenant conditioned on any assumption that the Emergency Price Control Act of 1942 or the Rent Regulation for Housing is or will be declared unconstitutional or void;

and ordering and directing defendant

(d) to file with the Area Rent Office at Minneapolis, Minnesota, within thirty days after the service of the Writ of Injunction, a registration statement, on the form provided therefor by said Office, for each housing accommodation now owned by defendant and rented on March 1, 1942 under a rental agreement providing for a monthly gross rent and containing a provision for a discount on payment of the rent within a stipulated time after its due date, and to set forth in the registration statement so filed the information required by the Rent Regulation for Housing and including the amount of the net rent payable within the discount period on the base date or the discount provision prevailing on that date;

(e) to tender to such persons as are entitled thereto a refund of all amounts collected by defendant from tenants as rent for the use and occupancy of housing accommodations in excess of the maximum rents established by said Regulation.

2. And for such other relief as the Court may find necessary and appropriate to effectuate the purposes of the Emergency Price Control Act of 1942.

Dated November —, 1943.

GEORGE J. BURKE,
General Counsel.
ALEX ELSON,
Regional Attorney.
JOHN M. MANIERRE,
Regional Enforcement Attorney.
NOBEL SHADDUCK,
District Enforcement Attorney.
RALPH M. MCCAREINS,
Senior Enforcement Attorney.
ARNOLD A. KARLINS,
District Rent Attorney.
c/o Twin Cities District Office, Office of Price Administration, W-1200 First National Bank Building, Saint Paul, Minnesota.
Attorneys for Plaintiff.

[Duly sworn to by R. M. McCarvins; jurat omitted in printing.]

8 *Exhibit "A"*

I Description of Accommodations:	2806 James Avenue South, Minneapolis, Minnesota—Belvedere				
II Apartment No.	#107	#201	#306	#208	#305
III Matimum Rent:	$50.00	$50.00	$43.00	$53.50	$43.00
Which was amount demanded or received on:	Mar. 1, '42	Mar. 1, '42	Feb. 1, '42	June 1, '42	Mar. 1, '42
IV Rent Received:	$55.00	$55.00	$45.00	$59.00	$45.00
For Period: From	Nov. 1, '42	Nov. 1, '42	Nov. 1, '43	Nov. 1, '42	Nov. 1, '42
To:	Nov. 30, '42	Nov. 30, '42	Nov. 30, '42	Nov. 30, '42	Nov. 30, '42
Rent Received:	$55.00	$55.00	$45.00	$59.00	$45.00
For Period: From	Dec. 1, '42	Dec. 1, '42	Dec. 1, '42	Dec. 1, '42	Dec. 1, '42
To	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42
Rent Received:	$55.00	$55.00	$45.00	$59.00	$45.00
For Period: From	Jan. 1, '43	Jan. 1, '43	Jan. 1, '43	Jan. 1, '43	Jan. 1, '43
To	Jan. 31, '43	Jan. 31, '43	Jan. 31, '43	Jan. 31, '43	Jan. 31, '43
Rent Received:	$55.00	$55.00	$45.00	$59.00	$45.00
For Period: From	Feb. 1, '43	Feb. 1, '43	Feb. 1, '43	Feb. 1, '43	Feb. 1, '43
To	Feb. 28, '43	Feb. 28, '43	Feb. 28, '43	Feb. 28, '43	Feb. 28, '43
Rent Received:	$55.00	$55.00	$45.00	$59.00	$45.00
For Period: From	Mar. 1, '43	Mar. 1, '43	Mar. 1, '43	Mar. 1, '43	Mar. 1, '43
To	Mar. 31, '43	Mar. 31, '43	Mar. 31, '43	Mar. 31, '43	Mar. 31, '43
Rent Received:	$55.00	$55.00		$59.00	$45.00
For Period: From	Apr. 1, '43	Apr. 1, '43		Apr. 1, '43	Apr. 1, '43
To	Apr. 30, '43	Apr. 30, '43		Apr. 30, '43	Apr. 30, '43
Rent Received:	$55.00	$55.00		$59.00	$45.00
For Period: From	May 1, '43	May 1, '43		May 1, '43	May 1, '43
To	May 31, '43	May 31, '43		May 31, '43	May 31, '43
Rent Received:	$55.00	$55.00		$59.00	$45.00
For Period: From	June 1, '43	June 1, '43		June 1, '43	June 1, '43
To	June 30, '43	June 30, '43		June 30, '43	June 30, '43
Rent Received:				$59.00	
For Period: From				July 1, '43	
To				July 31, '43	

Exhibit "A-1"

I Description of Accommodations:
II Apartment No:
III Maximum Rent:
Which was amount demanded or received on
IV Rent Received:
For period: From
To
Rent Received:
For period: From
To
Rent Received:
For period: From
To
Rent Received:
For period: From
To
Rent Received:
For period: From
To
Rent Received:
For period: From
To
Rent Received:
For period: From
To
Rent Received:
For period: From
To

#1425 LaSalle Ave., Mpls. Vine Hall	
#101	#208
$50.00	$30.00
Mar. 1, '42	Mar. 1, '42
$53.50	$28.75
Nov. 1, '42	Nov. 5, '42
Nov. 30, '42	Nov. 30, '42
$53.50	$34.50
Dec. 1, '42	Dec. 1, '42
Dec. 31, '42	Dec. 31, '42
$53.50	$34.50
Jan. 1, '43	Jan. 1, '43
Jan. 31, '43	Jan. 31, '43

#3210 Girard Ave. So., Mpls. El Capitan	
#103	#304
$55.00	$55.00
Mar. 1, '42	Mar. 1, '42
$56.50	$56.50
Nov. 1, '42	Nov. 1, '42
Nov. 30, '42	Nov. 30, '42
$56.50	$56.50
Dec. 1, '42	Dec. 1, '42
Dec. 31, '42	Dec. 31, '42
$56.50	$56.50
Jan. 1, '43	Jan. 1, '43
Jan. 31, '43	Jan. 31, '43
$56.50	$56.50
Feb. 1, '43	Feb. 1, '43
Feb. 28, '43	Feb. 28, '43
$56.50	$56.50
Mar. 1, '43	Mar. 1, '43
Mar. 31, '43	Mar. 31, '43
$56.50	$56.50
Apr. 1, '43	Apr. 1, '43
Apr. 30, '43	Apr. 30, '43
$56.50	$56.50
May 1, '43	May 1, '43
May 31, '43	May 31, '43
$56.50	$56.50
June 1, '43	June 1, '43
June 30, '43	June 30, '43

#1101-1105 W. 28th St., Mpls. Dupont Court	
#102	#104
$45.00	$43.00
Mar. 1, '42	Mar. 1, '42
$52.50	$58.00
Nov. 1, '42	Nov. 1, '42
Nov. 30, '42	Nov. 30, '42
$52.50	$58.00
Dec. 1, '42	Dec. 1, '42
Dec. 31, '42	Dec. 31, '42
$52.50	$58.00
Jan. 1, '43	Jan. 1, '43
Jan. 31, '43	Jan. 31, '43
$52.50	$58.00
Feb. 1, '43	Feb. 1, '43
Feb. 28, '43	Feb. 28, '43
$52.50	$58.00
Mar. 1, '43	Mar. 1, '43
Mar. 31, '43	Mar. 31, '43
$52.50	$58.00
Apr. 1, '43	Apr. 1, '43
Apr. 30, '43	Apr. 30, '43
$52.50	$58.00
May 1, '43	May 1, '43
May 31, '43	May 31, '43
$52.50	$58.00
June 1, '43	June 1, '43
June 30, '43	June 30, '43

10 *Exhibit "A-2"*

I	Description of Accommodations:	#123 Oak Grove, Minneapolis Bronzin	#1456 Lagoon Ave., Mpls. Granada		#1117-1125 W. 28th St., Mpls. Emerson Court
II	Apartment No.:	#103	#87	#305	#201
III	Maximum Rent:	$42.50	$46.00	$47.50	$53.50
	Which was amount demanded or received on:	Mar. 1, '42	Mar. 1, '42	Mar. 1, '42	Mar. 1, '42
IV	Rent Received:	$45.00	$47.50		$62.50
	For period: From	Nov. 1, '42	Nov. 1, '42		Nov. 1, '42
	To	Nov. 30, '42	Nov. 30, '42		Nov. 30, '42
	Rent Received:	$45.00	$47.50	$52.50	$62.50
	For period: From	Dec. 1, '42	Dec. 1, '42	Dec. 1, '42	Dec. 1, '42
	To	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42
	Rent Received:	$45.00	$47.50	$52.50	$62.50
	For period: From	Jan. 1, '43	Jan. 1, '43	Jan. 1, '43	Jan. 1, '43
	To	Jan. 31, '43	Jan. 31, '43	Jan. 31, '43	Jan. 31, '43
	Rent Received:	$45.00	$47.50	$52.50	$62.50
	For period: From	Feb. 1, '43	Feb. 1, '43	Feb. 1, '43	Feb. 1, '43
	To	Feb. 28, '43	Feb. 28, '43	Feb. 28, '43	Feb. 28, '43
	Rent Received:	$45.00	$47.50	$52.50	$62.50
	For period: From	Mar. 1, '43	Mar. 1, '43	Mar. 1, '43	Mar. 1, '43
	To	Mar. 31, '43	Mar. 31, '43	Mar. 31, '43	Mar. 31, '43
	Rent Received:	$45.00	$47.50	$52.50	$62.50
	For period: From	Apr. 1, '43	Apr. 1, '43	Apr. 1, '43	Apr. 1, '43
	To	Apr. 30, '43	Apr. 30, '43	Apr. 30, '43	Apr. 30, '43
	Rent Received:	$45.00	$47.50	$52.50	$62.50
	For period: From	May 1, '43	May 1, '43	May 1, '43	May 1, '43
	To	May 31, '43	May 31, '43	May 31, '43	May 31, '43
	Rent Received:	$45.50	$47.50	$52.50	$62.50
	For period: From	June 1, '43	June 1, '43	June 1, '43	June 1, '43
	To	June 30, '43	June 30, '43	June 30, '43	June 30, '43

11 *Exhibit "A-3"*

I	Description of Accommodations:	#2880 James Avenue South, Minneapolis, Minnesota—The Martinique				
II	Apartment No:	#103	#201	#206	#304	#205
III	Maximum Rent:	$35.00	$52.50	$30.00	$42.50	$43.50
	Which was amount demand or received on:	Mar. 1, '42	Mar. 1, '42	Mar. 1, '42	Mar. 1, '42	Mar. 1, '42
IV	Rent Received:	$40.00	$58.50	$40.00	$47.50	$47.50
	For period: From	Nov. 15, '42	Nov. 1, '42	Nov. 1, '42	Nov. 1, '42	Nov. 1, '42
	To	Dec. 14, '42	Nov. 30, '42	Nov. 30, '42	Nov. 30, '42	Nov. 30, '42
	Rent Received:	$40.00	$58.50	$40.00	$47.50	$47.50
	For period: From	Dec. 15, '42	Dec. 1, '42	Dec. 1, '42	Dec. 1, '42	Dec. 1, '42
	To	Jan. 14, '43	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42	Dec. 31, '42
	Rent Received:	$40.00	$58.50	$40.00	$47.50	$47.50
	For period: From	Jan. 15, '43	Jan. 1, '43	Jan. 1, '43	Jan. 1, '43	Jan. 1, '43
	To	Feb. 14, '43	Jan. 31, '43	Jan. 31, '43	Jan. 31, '43	Jan. 31, '43
	Rent Received:	$40.00	$68.50	$40.00	$47.50	$47.50
	For period From	Feb. 15, '43	Feb. 1, '43	Feb. 1, '43	Feb. 1, '43	Feb. 1, '43
	To	Mar. 14, '43	Feb. 28, '43	Feb. 28, '43	Feb. 28, '43	Feb. 28, '43
	Rent Received:	$40.00	$58.50	$40.00	$47.50	$47.50
	For period: From	Mar. 15, '43	Mar. 1, '43	Mar. 1, '43	Mar. 1, '43	Mar. 1, '43
	To	Apr. 14, '43	Mar. 31, '43	Mar. 31, '43	Mar. 31, '43	Mar. 31, '43
	Rent Received	$40.00	$58.50	$46.50	$47.50	
	For period: From	Apr. 15, '43	Apr. 1, '43	Apr. 1, '43	Apr. 1, '43	
	To	May 14, '43	Apr. 30, '43	Apr. 30, '43	Apr. 30, '43	
	Rent Received:	$40.00	$58.50	$46.50	$47.50	
	For period: From	May 15, '43	May 1, '43	May 1, '43	May 1, '43	
	To	June 14, '43	May 31, '43	May 31, '43	May 31, '43	
	Rent Received:	$40.00	$58.50	$46.50	$47.50	
	For period: From	June 15, '43	June 1, '43	June 1, '43	June 1, '43	
	To	July 14, '43	June 30, '43	June 30, '43	June 30, '43	

Total number of violations, Exhibit A to A-3, inclusive—144.

12 *Exhibit "B".*

This Indenture, Made this 4th day of August, 1941 by and between Warner Holding Company, party of the first part, Lessor, and J. T. Morgan, party of the second part, Lessee.

Witnesseth, That said party of the first part, in consideration of the rents and covenants hereinafter mentioned, to be paid and performed by said party of the second part, does hereby Demise, Lease and Let unto the said party of the second part, and the said party of the second part does hereby hire and take from the said party of the first part the following described premises, situate in the City of Minneapolis, County of Hennepin and State of Minnesota to-wit:

Apartment numbered 201 on second floor of the Martinique, situate 2880 James Ave. So. to be occupied as and for a dwelling, and for no other purpose.

To Have and to Hold, The above rented Apartment to the said party of the second part, his heirs and assigns, for and during the full term of One year from and after the first day of September, 1941, to and until the last day of August, 1942.

And the said party of the second part, for himself, his heirs and assigns, agrees to and with the said party of the first part, to pay him, his heirs or assigns, as rent for the above mentioned Apartment, the sum of Six Hundred Ninety and No 100 Dollars, in equal monthly payments of Fifty Seven and 50/100 Dollars, per month, from September 1, 1941 (See discount clause below) payable in advance at the office of Warner Holding Company, 1224 Baker Building, Minneapolis, Minnesota, on the first day of each and every month for and during the full term of this Lease.

Said Party Of The Second Part Also Covenants And Agrees As Follows: To comply with any printed or typewritten regulations now made and posted in said premises, or hereafter to be made and so posted, relating to the use of said building. To keep premises in as good condition as they now are, or may be put into by said party of the first part, ordinary wear resulting from careful
13 usage and damage by the elements without fault on part of party of the second part, alone excepted. To drive no nails or screws, or their equivalent, into the walls, ceiling, woodwork or floors of said premises, or make any change in the internal structure of said building, or any room therein.

To not sell or assign this lease or sublet the said premises, or any part thereof, to any person without first obtaining the written consent of said party of the first part. To use gas stoves only for cooking; all gas for fuel or light to be paid for by party of the second part. To permit no noise or nuisance whatever on said premises to the disturbance of other tenants, or keep any animals

in said premises. To comply in all respects with any policy of insurance now upon or covering said premises, or which may hereafter be put upon the same, or permit anything to be done at or within said leased premises which shall vitiate or increase the current rate of insurance thereon, or upon property kept therein.

To take good care of and keep said premises so as not to endanger the same, or any co-tenants therein.

To make no claim against said Lessor for or on account of any loss or damage sustained by fire or water, deluge or overflow, howsoever coming or being, within said premises, or for loss of any articles, from any cause, from said building or premises.

No repairs or alterations shall be made except with the full knowledge and consent of said party of the first part. Lessee to be responsible for and mend at his own proper cost, any and all breakage or damage done to any part of premises hereinbefore mentioned, of whatever nature. To replace with as good quality and size, and make good at his own expense, any glass broken on said premises during the continuance of this lease (said glass now being whole).

To care for waxed floors in said apartments properly, allowing no water to be used thereon.

To allow no baby-carriages or go-carts or other obstructions to be left standing in the public halls or vestibules in said building.

To permit party of the first part, by his officers or agents,
14 to enter said premises at all reasonable times, to view them or to show them to parties wishing to lease or make improvements thereon; and at the expiration of the time herein recited quietly yield and surrender said premises to said party of the first part, his heirs or assigns, in such condition as herein covenanted.

Provided, That if said premises shall be destroyed by fire, this lease shall terminate, but without rebate of rent paid, or due and unpaid; that should party of second part, his heirs, executors, administrators or assigns, fail to make the above mentioned payments as herein specified, or to pay any of the rent aforesaid when due, or shall fail to fulfill any of the covenants or agreements herein contained, then and in that case it shall be lawful for the said party of the first part, his heirs or assigns, to declare this lease at an end, and re-enter and take possession of said premises, and to hold and retain the same fully and absolutely without such re-entry working a forfeiture of the rents to be paid and the covenants to be performed by the said party of the second part during the full term of this lease.

It is expressly agreed that there shall be no surrender of said premises before the expiration of this lease by party of the second part, except by written consent thereto, hereon, signed by party

of the first part. Second party further agrees to give party of the first part written notice forty days before the expiration of this lease of his intention to vacate at the end of this lease, otherwise party of the first part will have option of continuing this lease for one year from such expiration without notice to party of the second part.

Gas range furnished by first party to be kept in order by second party. Party of first part agrees to furnish heat for heating said premises from October to May as necessary.

Also to furnish lighting fixtures to all rooms, also window shades and screens (except hall windows), now being whole, and to be replaced if broken by second party. Hot and cold water to be furnished by party of the first part, but in case of waste or unnecessary use it shall be paid for thereafter by second party at regular rate charged.

15 Discount Clause: It Is Understood And Agreed that in the event the lessor shall receive from the party of the second part, lessee, the monthly rental on or before the 10th day of the month in which it is due that the lessee herein may deduct a discount of $5.00 per month, making net rental $52.50 if paid on or before the 10th day of the month in which it is due.

This lease is null and void providing the state or municipal subsidies exercise their rights of eminent domain.

It Is Understood And Agreed that lessee will make no claim, and lessee hereby expressly waives any and all claims against said lessor for or on account of any personal injury sustained, or any loss or damage to property, caused by fire, water, deluge or overflow, or explosion, howsoever arising or caused or being within said premises, or for loss of any articles by theft, or from any cause, from said premises or building.

It is further understood and agreed that the party of the second part, lessee, agrees to pay a deposit of 50 cents for each key, which will be refunded upon receipt of the keys at the end of this lease providing no rent is due and unpaid.

It is understood that the above apartment is furnished per inventory.

It is understood and agreed that the lessee pay pro rata extra for the month of August, 1941, from the day they move in, which is from August 6, 1941, as an additional consideration.

In Testimony Whereof, Both parties have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in Presence of
Lois G. Hudson.
Lois G. Hudson.

Warner Holding Company,
By H. L. Warner, Pres. [SEAL]
J. T. Morgan [SEAL]

16 Personal Acknowledgment

State of _____,
County of _____—ss.:
On this _____ day of _____, 19____, before me personally appeared _____, to me known to be the person____ described in and who executed the foregoing instrument, and acknowledged that _____he_____ executed the same as _____ free act and deed.
[SEAL] _____Notary Public,
_____County_____
My commission expires _____, 19____

Acknowledgment of Corporation

State of _____,
County of _____—ss.:
On this _____ day of _____, 19____, before me personally appeared _____ to me personally known, who being duly sworn, did say that he is the _____ of _____, a corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was executed by authority of its Board of Directors; and the said _____ acknowledged said instrument to be the free act and deed of said corporation.
[SEAL] _____
Notary Public,
_____County_____
_____
My commission expires _____, 19____

Assignment

Consent is herewith given for the _____
(Insert, Assign or Underlet)
of the within Lease to _____.
Dated _____, 19____ _____

17 APARTMENT LEASE FROM WARNER HOLDING COMPANY LESSOR, TO J. T. MORGAN, LESSEE

Amount, $57.50 per month payable Net $52.50 if paid on or before 10 of the month in which it is due, at 1224 Baker Building.

Apartment #201

The Martinique

Sept. 1, 1941 to Aug. 31, 1942

Rider to Lease Between the Warner Holding Company, Lessor, and J. T. Morgan, Lessee.

It is understood and agreed that in case the lessee is transferred by his employer permanently from the twin city area this lease is null and void so far as expiration is concerned providing no rent is due and owing and sixty days written notice instead of the Minnesota statuatory thirty days is given and rent is paid to the expiration of said sixty days.

Exhibit "C"

WARNER HOLDING COMPANY

1922-24-26 Baker Building

MINNEAPOLIS, MINNESOTA

SEPTEMBER 24, 1943.

MRS. ELIZABETH HOFFMAN,
Apartment #111,
1101 West 28th Street, Minneapolis, Minnesota.

DEAR MADAM: Assuming that the Emergency Price Control Act of 1942 is unconstitutional in whole, or in part respecting rents, we formally request the apartment you are now occupying to be vacated October 31, 1943.

18 We have claimed and believe that the Emergency Price Control Act of 1942 as respects rents and the confiscatory and ridiculous regulations issued by the Administrator and promulgated under and by virtue of the said Act, are unconstitutional and void. Litigation is pending whereby we are testing the legality of the Act. It is our intention to present the matter to the highest court in the land.

This is to notify you that if the Emergency Price Control Act of 1942 as respects rents is finally adjudged unconstitutional, and you elect to stay in our apartment against our wishes, beyond October 31, 1943, that you are obligated to us for ten months' rent at a cost to you of $900.00, plus 40% extra for attorney's fees, if necessary to employ an attorney to collect the same, payable in installments of $45.00 each and every month if paid later than the 5th of the month in which the installment is due or $40.00 each and every month if paid on or before the 5th of the month

in which it is due, up and until July 1, 1944, when the balance of $900.00 will be due and payable for the period October 31, 1943 to August 31, 1944.

As and if the Emergency Price Control Act of 1942 is finally adjudged constitutional in its entirety, or as respecting rents, you would be safe in arbitrarily staying in our building, contrary to our wishes, and notices in the matter. However, we have no desire to have you continue residing in our premises, and much prefer that you vacate the apartment on October 31, 1943, as requested.

Yours truly,

WARNER HOLDING COMPANY,
(S) H. L. WARNER, *Pres.*

[File endorsement omitted.]

Answer to amended and supplemental complaint.

(Filed Dec. 18, 1943)

Comes Now the defendant and for its Answer to the Amended and Supplemental Complaint:

I

Admits that if the Emergency Price Control Act of 1942 is constitutional, jurisdiction of this action is conferred upon the Court by Section 205–C thereof.

19

II

Defendant admits the allegations of Paragraph II of the Complaint and admits that on and after the 1st day of November 1942, defendant was the owner of the housing accommodations in the apartment buildings described in Paragraph III of the Complaint except that defendant denies that at the time of the commencement of this action it was the owner of the premises known as Vine Hall Apartments.

III

As to the allegations of Paragraphs V, VI, VII, VIII, and IX of the Amended and Supplemental Complaint, defendant alleges that the Emergency Price Control Act of 1942 as amended hereinafter, referred to as the Act, and the rules, regulations and order promulgated thereunder by the said alleged Administrator thereof, is and are unconstitutional and void, and the terms and provisions and the manner and means employed therein to affect the alleged purposes thereof and all orders and regulations promulgated pursuant thereto are contrary to the terms and provisions of the Constitution of the United States of America in this—

(a) They and each of them violate and are repugnant to Article I, Section 1 of said Constitution in that among other things—

(1) The said Act constitutes an unlawful, unwarranted and unauthorized delegation of Power by Congress to the Administrator therein referred to;

(2) The Congress thereby has delegated powers to an Administrator without providing in the Act for adequate, sufficient or reasonable standards, or any standards at all, for said Administrator's actions and his right and power to act in the administration of the Act;

(3) Thereby the Congress has impowered an alleged Administrator to make and enact laws by regulation and order without adequate, reasonable or sufficient control retained over or limitations imposed on him in his tenure in office, his activities or non-activities and the extent of power he is authorized to employ;

(4) Thereby the Congress has unlawfully surrendered and transferred to said Administrator the power granted to it and it alone by the Constitution to enact legislation.

(b) They and each of them violate and are repugnant to Article I, Section 8 of said Constitution of the United States in that, among other things—

(1) The Congress has exceeded its power and authority granted to it by said section;

(2) The Congress has dealt with a subject embracing Intra State Commerce in a manner and to an extent that is unwarranted, unnecessary, improper and beyond the scope of the powers delegated to Congress directly or by implication by the provisions of said Section 8;

(3) The Congress has surrendered and delegated to an Administrator the power to make laws which it and it alone can determine to be necessary and proper for carrying into execution the powers given to Congress under said Section 8 and has left to the discretion of said Administrator not only the necessity and propriety of such laws, the determination of which are reserved to the Congress alone, but has delegated to him the determination of context of the said laws themselves;

(4) Thereby the Congress has impowered an alleged Administrator to make and enact laws by regulation and order without adequate, reasonable or sufficient control retained over or limitations [impowed] on him in his tenure in office, his activities or non-activities and the power he is authorized to employ.

(c) They and each of them violate and are repugnant to the IVth, Vth and VIth Amendments to said Constitution in that, among other things—

(1) The Congress has thereby deprived the Defendant of his property without due process of law;

(2) The Congress thereby takes the Defendant's property for public use without just compensation and thereby causes confiscation without compensation;

(3) That the Act requires the Defendant to produce and
21 file papers, documents and reports that, without limits, may be prescribed by regulation and order in the sole discretion of an Administrator and thereby compells production of Defendant's private books and papers, to be used against him or his property in a criminal or penal proceeding or for a forfeiture and thereby compells him to give testimony against himself, or on his failure so to do, to suffer the penalties prescribed by the Act, all of which are against the spirit and meaning of said Amendments;

(4) The Act violates defendant's right to be secure in his person, house, papers, and effects against unreasonable searches and seizures, contrary to the provisions of said Amendments;

(5) The said Act fixes penalties for violation of provisions that are neither incorporated in the Act nor can they be found therein by any implication whatsoever;

(6) The Act deprives Defendant of his liberty and property without due process of law in that said Act affords Defendant no protection against arbitrary and capricious regulations and orders of the Administrator.

IV

That the Administrator, Office of Price Administration, his agents and employees, in administering said alleged Act with respect to the rights of defendant, have acted arbitrarily, without authority of law, without affording opportunity to defendant to be heard, and by reason thereof, they, and each of them, have made it impracticable and impossible, to the time of the commencement of this action, for defendant to comply with the applicable, pertinent, complicated and exacting requirements of the provisions of the Orders and Regulations which said Administrator has promulgated with respect to rent control in the district attempted to be designated as Minneapolis and St. Paul Defense Rental Area, although defendant, without admitting the validity of said law, rules and regulations, has attempted to reasonably comply therewith.

V

Defendant alleges that the rents collected by the defendant from said housing accommodations in said apartment buildings, whether as set forth in Exhibit "A" attached to
22 the Amended and Supplemental Complaint herein or other-

wise, were and are the fair and reasonable rents for said premises, were paid, charged for and collected by the defendant in accordance with the business practices of defendant which had been established long before the enactment of the alleged Act, were fair and reasonable charges for the use and occupancy of said respective housing accommodations and that insofar as regulations, orders and requirements promulgated by said Administrator are in conflict with and purport to compel a change in the business practices of said defendant, the same are void, contrary to the terms and provisions of said Emergency Price Control Act, and of no force and effect,

VI

Defendant admits that it has refused to refund to tenants who have complained that the rents collected by the defendant are contrary to the terms and provisions of said Act and said regulations, and has in good faith as it was its right to do, interposed defenses thereto where actions have been brought thereon and this defendant denies that this Court has jurisdiction to deprive this defendant of its right to in good faith contest on the merits any claims by any tenants made in said connection.

VII

Further answering, and particularly to Paragraph VIII of said Amended and Supplemental Complaint, defendant admits that in some instances in filing said registration statements it specified therein the rental as of March 1, 1942, as the gross rental received therefrom on said date; admits that it had the discount clauses in some of its leases as alleged in said paragraph and alleges the facts to be that the amount of said gross rent of said premises as of the 1st day of March 1942, was the amount of rental charged for the said housing accommodations and denies that any registration statement filed by the defendant in connection with the allegations of Paragraph VIII or otherwise have been filed by defendant for the purpose of attempting to evade the provisions of said regulations.

VIII

Defendant admits that it wrote and mailed to two (2) tenants the letter, a copy of which is attached to the Com-
23 plaint and marked Exhibit "C," and denies the other allegations of said Paragraph IX of said Amended and Supplemental Complaint.

IX

That the Plaintiff has commenced this action prematurely and before giving the defendant an opportunity to be heard or to present facts showing that it had not violated said alleged Act, Orders and Regulations and that by reason of the premises the plaintiff does not come into a Court of Equity with clean hands.

X

Defendant denies that it has violated any of the provisions of said Act, and denies it has violated any of the provisions of said Orders and Regulations within the meaning and intent thereof fairly and reasonably interpreted and administered and alleges that the said Administrator, his agents and employees, have failed, refused and neglected to fairly and reasonably interpret and administer said Act, Orders and Regulations with respect to the rights of defendant.

Wherefore, Defendant prays the judgment and decree of this Court that said Amended and Supplemental Complaint be dismissed and Defendant have its costs and disbursements herein incurred.

M. R. KEITH,
305 South Fifth Street, Minneapolis, Minnesota,
R. H. FRYBERGER,
1110 Baker Building, Minneapolis, Minnesota,
Attorneys for Defendant.

Due service of the within answer to Amended and Supplemental Complaint is hereby admitted this 18th day of December 1943.

R. M. MCCAREINS,
One of Attorneys for Plaintiff.

[File endorsement omitted.]

24 In United States District Court

Amendment to prayer of amended and supplemental complaint
(Filed May 11, 1944)

Pursuant to the understanding with counsel for defendant permitting plaintiff to make the following amendment,

Plaintiff Hereby Amends the prayer of the Amended and Supplemental Complaint by striking out paragraph (e) therefrom and inserting in lieu thereof the following:

(e) to tender to such persons as are entitled thereto a refund of all amounts collected by defendant from tenants as rent for the use and occupancy of housing accommodations in excess of the maximum rents established by said Regulation, provided, how-

ever, that defendant shall not be required to make such tender to any person who has commenced an action against defendant under Section 205 (e) of the Emergency Price Control Act of 1942 alleging the collection by defendant of rent in excess of the maximum rents established by said Regulation.

Dated: May 8, 1944.

ALEX ELSON,
Regional Attorney,
RALPH M. MCCAREINS,
District Enforcement Attorney,
ARNOLD A. KARLINS,
Chief Rent Attorney,
Attorneys for Plaintiff,
c/o Twin Cities District Office, Office of Price Administration, W-1200 First National Bank Bldg., St. Paul, Minnesota.

[File endorsement omitted.]

In United States District Court

Opinion of Court

(Filed Oct. 26, 1944)

This is a suit under the Emergency Price Control Act of 1942, section 205 (a) 50 U. S. C. A. App. section 925 (a), hereinafter called the Act, by the Administrator of the Office of Price
25 Administration to enforce compliance with the Act and the applicable price regulations. A preliminary injunction has been granted. See Brown vs. Warner Holding Co., 50 F. Supp. 593. Plaintiff also seeks an order compelling restitution to certain tenants of rents collected by defendant in excess of "ceilings". These questions present different considerations and will be discussed separately.

I. Injunction of Violations of the Act and Regulations

The pertinent provisions of section 205 (a) of the Act are:

"Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this act [see footnote], he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bonds."

The power of this court under this section has been carefully resolved in Hecht Co. vs. Bowles, 321 U. S. 321. The Supreme Court there held that although "the cessation of violations whether before or after the institution of a suit by the Administrator is no bar to the issuance of an injunction under section 205 (a)" (321 U. S. 327), the statute is not mandatory and the type of order and whether one should issue is within the discretion of the court in the exercise of its historic equity powers. This discretion must be exercised

"* * * in light of the large objectives of the Act. For the standards of the public interest, not the requirements of
26 private litigation, measure the propriety and need for injunctive relief in these cases. That discretion should reflect an acute awareness of the congressional admonition that 'of all the consequences of war, except human slaughter, inflation is the most destructive' (S. Rep. No. 931, supra, p. 2) and that delay or indifference may be fatal." (321 U. S. 331.)

With these principles in mind the facts of the case must determine whether plaintiff should be granted the relief asked. The following grounds are specified in the complaint: (a) demanding or receiving or attempting to demand or receive rents in excess of the maximum as prescribed by the regulations; (b) attempting to evict tenants in violation of the regulations; (c) failure to properly register rental units with the rent control office.

(a) Defendant is a corporation owning eight apartment buildings in the city of Minneapolis that are involved in these proceedings. The buildings contain approximately 280 rental units. The local rent control office made a "spot check" of defendant's books and records and prepared tabulations covering twenty rental units, some in each apartment building. The tabulations disclose collection of rents in excess of the ceiling in 155 instances. The amount of each overcharge varies from $1.50 to $16.50 per month and totals $807.75. It is conceded that these computations are correct.

Defendant's principal contention is that "in practically every instance" the apartment was rented under a lease for a definite term with a designated sum as rent for that term, and although this sum was payable monthly in advance, there can be no violation until defendant collects an amount in excess of the total specified in the lease on the base date. (The "base" or "maximum rent" date was March 1, 1942, for accommodations rented

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Section 4 of the Act, 50 U. S. C. A. App. sec. 904 (a) provides:
"It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person * * * to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2 * * * or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing."

on that date, with other provisions for accommodations subsequently rented). Therefore, defendant contends that this action is premature. Defendant argues that as it had the established practice on the maximum rent date of renting on a contractual basis for a fixed term and amount, "maximum rent" as used in the regulations must be defined as the term total prescribed
27 in the lease and not the monthly instalment actually paid by the tenant. I cannot agree with this contention. There is no evidence in this case that any tenant paid his "rent" more than one month in advance. Although a tenant might have the right to pay for a full year in advance under his lease, I do not see what effect that would have on the rent ceiling unless on the maximum rent date some tenant had actually done so. The leases provided for monthly payments in specific amounts. These amounts were paid by the tenants and accepted by the landlord on a monthly basis and are controlling in determining the maximum rents. Although defendant marked its receipts "on account" of rent, it is apparent that monthly payments were considered as the "rent." The following rider is attached to one of the leases and will suffice:

"It Is Understood And Agreed that retroactive to November 1, 1942 to the expiration of the Office of Price Administration rent control act, your *rent* is hereby reduced $2.50 *per month*." [Italics supplied.]

Section 2 (h) of the Act as amended June 30, 1944, now reads:

"(h) The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, or changes in established rental practices, except where such action is affirmatively found by the Administrator to be necessary to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this act."

Defendant contends that under the above quoted provision, before it can be found in violation, there must be an affirmative finding by the Administrator that the monthly instalments under the term lease are the ceilings. This argument is predicated on the assumption that defendant is compelled to change its business practice of renting by leases for a fixed term with monthly instalment payments. This is not the case. Nothing in the statute or regulations compels defendant to abandon this practice so long as it does not increase the amount of the term total or the monthly
28 installments due above the provisions in the lease in effect on the maximum rent date. As there is no compulsion to change rental practices, there is no need for an affirmative finding by the Administrator in this case.

Even if defendant's contention were valid it has little factual basis here. On only four apartments was there a lease during both the base and violation periods. The later leases all showed increases both in the term total and the monthly payments. Whatever definition might be given to "maximum" rent in these cases, the execution of the leases and the collection of the monthly instalments under them were violations of rent control. On ten apartments there were no leases on the maximum rent date although there were during the violation period, all calling for higher monthly payments than the maximum. On at least two apartments there were no leases either on the maximum rent date or during all or part of the violation period. To these situations defendant's argument is not applicable.

Defendant introduced testimony for several days including some 184 exhibits, consisting of correspondence, leases, petitions for adjustments in rent, registration forms, evidence of defendant's rental practices such as charging more for additional occupants including infants, evidence of improvements, redecorating, and of continued jousting with the rent control office. This mass of evidence was marshalled with commendable thoroughness and ably presents defendant's position that in many instances an increase in rental was justified because of increased services and improvements. Whatever views this court might have on these problems, the maximum rent on any particular dwelling unit is determined by the Administrator of the Office of Price Administration and the regulations issued pursuant to the Emergency Price Control Act. Judicial review of these determinations is exclusively vested in the Emergency Court of Appeals and the Supreme Court of the United States by section 204 of the Act, 50 U. S. C. A. App. section 924. This court has no jurisdiction to pass upon the validity or effectiveness of regulations or orders promulgated pursuant to this Act. *Henderson* vs. *Kimmel*, D. C. Kans., 47 F. Supp. 635, *Henderson* vs. *C. Thomas Stores*, D. C. Minn., 48 F. Supp. 295. The record discloses that in comparatively few instances did defendant avail itself
29 of the procedure prescribed in section 203 of the Act, 50 U. S. C. A. App. section 923, for appeal from adverse determinations by the local area rent director, and in no instance did defendant seek judicial review by the Emergency Court of Appeals. In the few cases where an appeal was taken defendant was not entirely without success. Defendant's president explained the failure to protest other adverse determinations by testifying that he felt it would be useless and that he felt "frustrated." In any event the determination by the regulations and the Administrator of the ceilings for the rental units involved

must be accepted as final in this court. It is therefore beyond dispute that these violations occurred.

(b) The second count charges defendant with "evicting or attempting to evict tenants" in violation of the regulations. There is no evidence of actual evictions and the attempts consisted of a series of letters written by defendant to various tenants in September and October, 1943, some time after the preliminary injunction was effective. The letters are similar in wording and tone. The following excerpt is illustrative:

"Inasmuch as we require to obtain an apartment for the writer's daughter * * *, and assuming that the Emergency Price Control Act of 1942 is unconstitutional in whole, or in part respecting rents, we formally request the apartment you are now occupying to be vacated November 30, 1943.

* * * * * *

"This is to notify you that if the Emergency Price Control Act of 1942, as respecting rents, is finally adjudged unconstitutional, and you elect to stay in our apartment against our wishes, beyond November 30, 1943, that you are obligated to us for eleven months' rent at a cost to you of $1,200, plus 40% extra for attorney's fees, if necessary to employ an attorney to collect the same. * * *

"As and if the Emergency Price Control Act of 1942 is finally adjudged constitutional in its entirety, or as respecting rents, you would be safe in arbitrarily staying in our building, contrary to our wishes and notices in the matter.

"If you elect to remain in the premises in spite of this notice, we require you to furnish us with suitable financial guarantee satisfactory to us on demand.

"However, we have no desire to have you continue to reside in our premises, and much prefer that you vacate the apartment on November 30, 1943, as requested."

Section 205 (a) of the Act, 50 U. S. C. A. App. 925 (a) gives the Administrator the right to seek an injunction for any violation of section 4 of the Act. Section 4 (a) [see footnote, supra] defines as unlawful any "*attempt*" * * * to do any of the foregoing.", Section 1388.286 (a) of Maximum Rent Regulation 53 states:

"So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession *or otherwise*, nor shall any person *attempt* such removal or exclusion from possession, * * *." [Italics supplied.]

In providing for injunctive relief for attempted violations the act and regulations are consistent with historic equity practice.

The purpose and intent of these letters is self-evident. The tenant is told to move or if the Act is held invalid he will become liable to defendant for a sum varying from $750 to $1,200 plus 40% attorney's fees in addition to the maximum rent. This is clearly an attempt to force the tenant to move or gamble with the landlord at the latter's terms upon the validity of the law. The uncertain position of the tenant upon the receipt of such a letter and the "pressure" on him to move can easily be imagined. My conclusion is that these letters were attempts at eviction without compliance with the regulations.

The letters are also a violation of the spirit of the injunction issued by this court June 29, 1943. Defendant was therein enjoined "directly or indirectly, from demanding or receiving, or attempting to demand or receive, rent" above the maximum. By conditioning its demand upon the invalidity of the Act defendant is not immune from the consequences of the attempt. Al-
31 though the injunction was not technically violated, the incident is indicative of defendant's attitude and persuasive on the question of the propriety of making the injunction permanent.

The failure to file proper registration forms was a matter of much controversy at the trial. Practically all of the leases contain a discount clause. That is, the gross amount was specified as the monthly payment with a provision for a $5.00 discount if paid on or before a certain date of the month. On the registration forms in the spaces provided for the rent on March 1, 1942 (the base date if the premises were then rented) and for the "Maximum Legal Rent", defendant inserted the gross monthly payment and added "as per lease" without specific mention of the discount clause or its terms. As there is no space specifically provided for a discount clause, defendant contends there has been no violation and can be none until such a form is provided. Plaintiff contends, with justification, that defendant's registrations do not disclose sufficient information to ascertain the ceiling. Defendant counters that there is no obligation to disclose the "net" rent and that "maximum" can mean only the "gross" rent.

Section 302 (g) of the Act, 50 U. S. C. A. App. section 942 (g) defines rent:

"The term 'rent' means the consideration demanded or received in connection with the use or occupancy or the transfer of a lease of any housing accommodations."

Section 1388.293 (10) of Maximum Rent Regulation 53 (7 Fed. Reg. 8596) defines the term:

"The term 'rent' means the consideration, including any bonus, benefit, or gratuity, demanded or received for the use or occupancy of housing accommodations * * *."

It should be apparent that the discount clause is part of the consideration received for rent within the meaning of these definitions and must be taken into consideration in determining the maximum rent where such an agreement was in effect on the maximum rent date. The situation could and should be disclosed on the registration form. This is not the insurmountable
32 obstacle that defendant contends it is. For example, in the appropriate space the maximum monthly rental could be stated:

"$50.00
$45.00, if paid on or before the 5th of the month."

This is simple and clearly discloses the rental terms.

Enough has been recited to show that violations occurred. The remaining consideration is whether there is likelihood of their resumption if the present injunction is dissolved. The violations continued for four and one-half months, from the time the Act became effective until the temporary injunction issued. Although almost a year passed before this trial there was no evidence that defendant had refunded or intended to refund any of the overcharges. The attitude of defendant's president as exemplified by his testimony and by numerous letters and petitions over his signature is one of belligerence and antagonism toward everything connected with rent control. In writing letters to tenants above referred to he came perilously close to contempt of this court. The[illegible] is nothing in this record to lead me to believe defendant will voluntarily comply with the act and regulations. The situation is almost the antithesis of that described in Hecht Co. vs. Bowles, 321 U. S. 321, where the violations were inadvertent and were corrected as soon as discovered and where every cooperation was given to the enforcing officials. In passing, as bearing upon many of the activities and some of the issues here involved, the court would suggest a reading of Henderson vs. Morgan, 54 F. Supp. 441.

It is the opinion of this court that the injunction should be made permanent with an additional prohibition against evictions or attempted evictions, and an order that within sixty days registration forms be filed substantially in accordance with this memorandum.

II. Restitution of Overcharges to Tenants

Plaintiff seeks to have the order compel restitution of overcharges to all tenants excepting those who have commenced a triple damage action against defendant under section
33 205 (e) of the Act. The question is squarely presented as to whether this court has the power to grant such relief in a suit by the Administrator. The question is a new one and

no case in point has been called to my attention. Plaintiff relies principally upon an analogy to the enforcement provisions of the Fair Labor Standards Act as interpreted in Walling vs. Miller, 8th Cir. 138 F. (2) 629, reversing Fleming vs. Miller, 47 F. Supp. 1004, decided by this court. That case involved a motion to vacate or modify a consent decree which included a provision for restitution of back wages to employees. This court modified only this part of the decree on the ground that section 16 (b) of the Fair Labor Standards Act of 1938, 29 U. S. C. A. section 216 (b), gave employees the exclusive right of action to recover unpaid wages and therefore there was a lack of jurisdiction to order restitution in a suit by the Administrator under section 17 of that Act.

In reversing this holding, the Circuit Court of Appeals (Walling vs. Miller, supra) pointed out that at the time the consent decree was entered into this court had jurisdiction of both the parties and the subject matter; it was so found and defendants did not challenge this finding on appeal. Therefore, the inherent power of this court was not involved but only a question going to the merits, i. e., the Administrator's capacity as plaintiff. It was held that by entering into the consent decree, defendants had waived the right of the Administrator to attack the modifying order. A careful reading of the opinion leaves no doubt that the Circuit Court of Appeals did not decide or intend to decide that the Administrator was authorized to bring a restitution suit. It is even stated that the contention that he has no such authority "may be sound" (138 F. 2nd 632). That this was the intention of the court is shown by Judge Woodrough's concurring opinion. He was of the view that an employer was in violation of the Act as long as he wrongfully withheld wages due and that Section 17, 29 U. S. C. A. 217, giving the United States District Court's power to "restrain violations" included the power to order restitution. He points out that the Administrator represents the public interest, and that the employees also have a private right to recover back wages is immaterial. Plaintiff adopts this reasoning in the case at bar by way of analogy. But no analogy exists be-
34 cause the majority opinion does not hold that the right of restitution under the Fair Labor Standards Act is lodged in this Court.

Section 205 (e) of the Act provides a remedy which I believe was intended to be exclusive of other remedies. It is there provided that one who buys a commodity sold in violation of a price ceiling, other than in the course of trade or business (the definition includes tenants of housing accommodations in defense rental areas):

"may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorneys' fees and the costs as determined by the court."

If such buyer or tenant is not entitled to bring such action the Administrator is given authority to bring it on behalf of the United States. Congress was careful to provide that no landlord or seller of any commodity could violate price ceilings without subjecting himself to these stringent penalties. If it were the intent of Congress to give the Administrator the right to seek an order for restitution in a case where the purchaser or tenant also had a right of action for treble damages, section 205 (e) would have been the logical section wherein to express such intent.

Plaintiff finally relies on the language of section 205 (a) wherein the Administrator is empowered:

"to make application to the appropriate court for an order enjoining such acts or practices, or *for an order enforcing compliance* * * * and upon a showing * * * a permanent or temporary injunction, restraining order, *or other order* shall be granted without bond." (50 U. S. C. A. App. section 925 (a)). [Italics supplied.]

Plaintiff argues that the underlined words are surplusage unless construed to refer to a type of relief corrective of past conduct as distinguished from the conceded power to enjoin future violations. In Hecht Co. vs. Bowles, 321 U. S. 321, the meaning of this language was considered. The Supreme Court said:

35 "Though the Administrator asks for an injunction, some 'other order' might be more appropriate, or at least so appear to the court. Thus in the present case one judge in the Court of Appeals felt that the District Court should not have dismissed the complaint but should have entered an order retaining the case on the docket with the right of the Administrator, on notice, to renew his application for injunctive relief if violations recurred. It is indeed not difficult to imagine that in some situations that might be the fairest course to follow and one which would be as practically effective as the issuance of an injunction. Such an order, moreover, would seem to be a type of 'other order' which a faithful reading of section 205 (a), would permit a court to issue in a compliance proceeding." (321 U. S. 328.)

In view of this language I do not believe an extension of the meaning of "other order" to include the kind of relief asked here is justified.

Defendant argues that granting restitution in this proceeding would be a denial of legal rights without a jury trial. There is some evidence in this case that in a treble damage action defendant

may have valid counter-claims against certain tenants for damage to or theft of its property. The tenants are not parties to this proceeding. One might well pose the question: Could this court, without a jury, adjudicate the amount of restitution in each of the twenty rental units involved here, some of which have had several different tenants, without the tenants before it and without the defendant having an opportunity to interpose valid counter-claims as a defense?

My conclusion is that this court lacks the power to grant an order compelling restitution of overcharges to tenants at the suit of the Administrator. I therefore do not reach the question of the propriety of such an order under the facts of this case.

The permanent injunction will issue in accordance with the conclusions expressed in part I of this memorandum.

36 This memorandum is made a part of the findings of fact and conclusions of law which will be filed herein. Exceptions will be preserved to all parties aggrieved.

Dated October 26, 1944.

MATTHEW M. JOYCE,
United States District Judge.

[File endorsement omitted.]

In United States District Court

Findings of fact, conclusions of law and order for judgment

Filed Nov. 8, 1944

The above-entitled action came before the undersigned, Judge of this Court, on the eleventh day of May 1944 for trial of the issues of law and fact made by the pleadings. Ralph M. McCareins and Glenn Catlin appeared as attorneys for the plaintiff and R. H. Fryberger and Max R. Keith appeared as attorneys for the defendant. Following the trial of this action briefs were submitted by the respective counsel for the parties and the matter was orally argued before the Court. The Court on the evidence submitted by the parties and after considering the argument of counsel made and filed a Memorandum Opinion dated October 26, 1944, and made said Memorandum a part of these Findings of Fact and Conclusions of Law, and the Court now makes the following:

Findings of fact

1. At all times herein mentioned defendant was and is a corporation, organized under the laws of South Dakota and licensed to do business in Minnesota, with its office and principal place of business in Minneapolis, Minnesota.

2. On and after November 1, 1942, defendant, as owner and lessor, leased and let to tenants housing accommodations in the apartment buildings in the City of Minneapolis, Minnesota, known and numbered as follows:

Belvedere Apartments, 2896 James Avenue South; Martinique Apartments, 2880 James Avenue South; Vine Hall Apartments, 1412 LaSalle Avenue South; Bronzin Apartments, 125 Oak Grove Street; El Capitan Apartments, 3210 Girard Avenue South; Dupont Court Apartments, 1101–1105 West 28th Street; Emerson Court Apartments, 1115–1125 West 28th Street; Granada Apartments, 1456 Lagoon Avenue.

The Housing accommodations in said apartment buildings consisted of rooms arranged as dwelling units, said buildings containing approximately 280 of such dwelling units. The Vine Hall Apartments was sold by defendant on February 1, 1943, and defendant has had no interest therein since said date.

3. Maximum Rent Regulation 53 (7 F. R. 8596), redesignated as "Rent Regulation for Housing" (8 F. R. 7822), hereinafter referred to as the Regulation, at all times on and after November 1, 1942, has established maximum rents for the use and occupancy of the housing accommodations owned and operated by defendant as aforesaid, and has prohibited defendant from demanding or receiving or offering, attempting or agreeing to demand or receive rent for the use and occupancy of said housing accommodations in excess of the maximum rents established therefor by said Regulation.

4. On and after November 1, 1942, defendant demanded and received rents for the use and occupancy of said housing accommodations in amounts in excess of the maximum established therefor by said Regulation. Exhibit "A", hereto attached and hereby made a part hereof, sets forth the amounts of rent so collected in excess of the maximum rent for twenty (20) of said two hundred and eighty (280) dwelling units, as shown by a "spot check" of said two hundred and eighty (280) dwelling units. This finding is to be understood as an adjudication between the plaintiff and defendant herein and not between the defendant and the tenants named in Exhibit "A."

5. On and for some time prior to June 29, 1943, defendant had knowledge of amounts it had collected from tenants in excess of the maximum rents established by said Regulation and of the persons from whom such amounts had been so collected. Defendant has failed and refused and still fails and refuses to tender to the persons so known by defendant to be entitled thereto, a refund of amounts so collected in excess of the maximum permitted by said Regulation.

38 6. At all times on and after November 1, 1942, said Regulation required defendant to file with the Area Rent Office at Minneapolis, Minnesota, on or before December 15, 1942, or within thirty days after the property was first rented, a registration statement for each housing accommodation rented or offered for rent by defendant, and to specify in said registration statement the maximum rent provided by said Regulation for the dwelling unit described therein. With respect to housing accommodations rented on March 1, 1942, defendant was required by said Regulation to set forth in said registration statement as the maximum rent for such housing accommodations the rent for such accommodations on that date. At all times herein mentioned, it was a practice of defendant in the operation of the said apartment buildings to rent dwelling units therein to tenants under agreements providing for a gross rent and containing a provision described in said agreements as a "Discount Clause" and providing for a "discount" on payment of the rent within a stipulated time after its due date. With respect to housing accommodations rented by defendant on March 1, 1942, under rental agreements providing for such a discount, defendant filed registration statements with said Area Rent Office showing only the gross rent stated in the leasing agreement and failed and refused and still fails and refuses to set forth in said registration statements the net rent payable within the discount period or the provision for a "discount." Defendant's practice of filing registration statements without showing the net rent or the "discount" provision prevailing on the base date prevents the use of the registration statement as an accurate source of information for ascertainment of the maximum rent in the administration of said Regulation.

7. At all times on and after November 1, 1942, said Regulation has provided that so long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, except on the grounds and in the manner stated in said Regula-

39 tion. Defendant has made demands on tenants in at least eight (8) different instances to vacate the premises of defendant, said demands being by letter and in from the same or similar to the letter, a copy of which is attached hereto, marked Exhibit "B" and hereby made a part hereof.

Conclusions of law

1. Jurisdiction of this action is conferred upon the Court by Section 205 (c) of the Emergency Price Control Act of 1942, as amended, hereinafter referred to as the Act.

2. Defendant has engaged in acts and practices which constitute a violation of Section 4 of the Act, in that

(a) defendant has demanded and received rent for housing accommodations in violation of said Regulation;

(b) defendant has attempted to evict tenants in violation of said Regulation;

(c) defendant has failed to file with the Area Rent Office, registration statements for housing accommodations showing the discount provision of rental agreements determining the maximum rent.

3. The Court, in this action, lacks the power to make an order requiring defendant to tender to persons, a refund of amounts collected by defendant as rent, in excess of the maximum established by said Regulation.

4. Plaintiff is entitled to a permanent injunction, enjoining defendant, its agents, servants, and employees, and all persons in active concert or participation with it, from, directly or indirectly:

(a) demanding or receiving, or attempting to demand or receive, rent for any housing accommodations in excess of the maximum rent established therefor by any Regulation or Order of the Office of Price Administration;

(b) evicting or attempting to evict tenants of defendant from any housing accommodations in violation of any Regulation or Order of the Office of Price Administration; and ordering and directing defendant

(c) to file with the Area Rent Office at Minneapolis, Minnesota, within sixty (60) days after service of the writ of injunction, a registration statement on the form provided therefor by said Office, for each housing accommodation now owned by defendant having a maximum rent determined by a rental agreement providing for a discount; and to set forth in said registration statement the maximum rent of said housing accommodations in such manner as to show the terms of said discount provisions.

Order for judgment

Plaintiff is entitled to judgment in the following form:

It Is Hereby Ordered, Adjudged and Decreed that the defendant, its agents, servants, and employees, and all persons in active concert or participation with it, be permanently enjoined from, directly or indirectly:

(a) demanding or receiving, or attempting to demand or receive, rent for any housing accommodations in excess of the maximum rent established therefor by any Regulation or Order of the Office of Price Administration;

(b) evicting or attempting to evict tenants of defendant from any housing accommodations in violation of any Regulation or

Order of the Office of Price Administration; and ordering and directing defendant

(c) to file with the Area Rent Office at Minneapolis, Minnesota, within sixty (60) days after service of the writ of injunction, a registration statement on the form provided therefor by said Office, for each housing accommodation now owned by defendant having a maximum rent determined by a rental agreement providing for a discount, and to set forth in said registration statement the maximum rent of said housing accommodations in such manner as to show the terms of said discount provisions.

It Is Further Ordered that that part of plaintiff's prayer for relief, requiring defendant

"to tender to such persons as are entitled thereto a refund of all amounts collected by defendant from tenants as rent for the use and occupancy of housing accommodations in excess of the maximum rents established by said Regulation, provided, however, that

41 defendant shall not be required to make such tender to any person who has commenced an action against defendant under Section 205 (e) of the Emergency Price Control Act of 1942 alleging the collection by defendant of rent in excess of the maximum rents established by said Regulation," be denied.

Let Judgment Be Entered Accordingly And A Writ Of Permanent Injunction Issue Forthwith.

Dated: November 8th, 1944.

MATTHEW M. JOYCE.
United States District Judge.

42 ***Exhibit "A"***

BELVEDERE APARTMENTS, 2896 JAMES AVENUE SOUTH, MINNEAPOLIS MINNESOTA

APARTMENT 107

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount over-ceiling	Total overceiling per apartment
Walter C. Koepke	11/3/42	$55.00	11/1-12/1/42	$50.00	$5.00	
	12/2/42	55.00	12/1-1/1/43	50.00	5.00	
	1/4/43	55.00	1/1-2/1/43	50.00	5.00	
	2/4/43	55.00	2/1-3/1/43	50.00	5.00	
	3/6/43	55.00	3/1-4/1/43	50.00	5.00	
	4/3/43	55.00	4/1-5/1/43	50.00	5.00	
	5/5/43	55.00	5/1-6/1/43	50.00	5.00	
	6/7/43	55.00	6/1-7/1/43	50.00	5.00	
						$40.00

BELVEDERE APARTMENTS, 2896 JAMES AVENUE SOUTH, MINNEAPOLIS MINNESOTA—Continued

APARTMENT 201

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount over-ceiling	Total overceiling per apartment
O. D. Campbell	10-13-42	$25.00	11/1-12/1/42	$50.00	$5.00	
	11-1-42	30.00				
	12-1-42	55.00	12/1-1/1/43	50.00	5.00	
	1-5-43	55.00	1/1-2/1/43	50.00	5.00	
	2-1-43	55.00	2/1-3/1/43	50.00	5.00	
	3-4-43	55.00	3/1-4/1/43	50.00	5.00	
	4-5-43	55.00	4/1-5/1/43	50.00	5.00	
	5-5-43	55.00	5/1-6/1/43	50.00	5.00	
	6-2-43	55.00	6/1-7/1/43	50.00	5.00	
						$40.00

APARTMENT 208

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount over-ceiling	Total overceiling per apartment
D. Olmstead; N. Olmstead; L. Bruneau, and D. Hock	10-18-42	$30.00	11/1-12/1/42	$53.50	$5.50	
	10-31-42	29.00				
	12- 5-42	59.00	12/1-1/1/43	53.50	5.50	
	1- 5-43	59.00	1/1-2/1/43	53.50	5.50	
	2- 4-43	59.00	2/1-3/1/43	53.50	5.50	
	3- 8-43	59.00	3/1-4/1/43	53.50	5.50	
	4- 5-43	59.00	4/1-5/1/43	53.50	5.50	
	5- 9-43	59.00	5/1-6/1/43	53.50	5.50	
	6- 9-43	59.00	6/1-7/1/43	53.50	5.50	
	8- 7-43	59.00	7/1-8/1/43	53.50	5.50	
						$49.50

APARTMENT 303

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount over-ceiling	Total overceiling per apartment
E. Russell Rudd	11-4-42	$45.00	11/1-12/1/42	$43.00	$2.00	
	12-2-42	45.00	12/1-1/1/43	43.00	2.00	
	1-3-43	45.00	1/1-2/1/43	43.00	2.00	
	2-6-43	45.00	2/1-3/1/43	43.00	2.00	
	3-5-43	45.00	3/1-4/1/43	43.00	2.00	
	4-5-34	45.00	4/1-5/1/43	43.00	2.00	
	5-5-43	45.00	5/1-6/1/43	43.00	2.00	
	6-2-43	45.00	6/1-7/1/43	43.00	2.00	
						$16.00

APARTMENT 306

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount over-ceiling	Total overceiling per apartment
Jean Craig & Beth Tanner	11-4-42	$45.00	11/1-12/1/42	$43.00	$2.00	
	12-4-42	45.00	12/1-1/1/43	43.00	2.00	
	1-5-43	45.00	1/1-2/1/43	43.00	2.00	
	2-5-43	45.00	2/1/43-3/1/43	43.00	2.00	
	3-3-43	45.00	3/1-4/1/43	43.00	2.00	
						$10.00

VINE HALL APARTMENTS, 1412–1425 LA SALLE AVENUE SOUTH, MINNEAPOLIS, MINNESOTA

APARTMENT 101

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Louis Barie	11-6-42	$53.50	No tenant card-record.	$50.00	$3.50	
	12-7-42	53.50	No tenant card-record.	50.00	3.50	
	1-5-43	53.50	No tenant card-record.	50.00	3.50	
	2-3-43	53.50	No tenant card-record.	50.00	3.50	
						$14.00

45

APARTMENT 208

Morris Holmberg	11-10-42	$28.75	11/5-11/30/42	$30.00	$3.75	
	12- 2-42	34.50	No Tenant card-record.	30.00	4.50	
	1- 5-43	34.50	No Tenant card-record.	30.00	4.50	
	2- 2-43	34.50	No Tenant card record.	30.00	4.50	
						$17.25

EL CAPITAN APARTMENTS, 3210 GIRARD AVENUE SOUTH, MINNEAPOLIS, MINNESOTA

APARTMENT 103

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
B. Abbott and L. W. Abbott	11- 5-42	$56.50	11/1-12/1/42	$55.00	$1.50	
Charles M. Lamar	11-28-42	9.00				
	11-29-42	16.00	12/1-1/1/43	55.00	1.50	
	12- 1-42	31.50				
	1- 4-43	56.50	1/1-2/1/43	55.00	1.50	
	1-31-43	56.50	2/1-3/1/43	55.00	1.50	
	3- 1-43	56.50	3/1-4/1/43	55.00	1.50	
	4- 3-43	56.50	4/1-5/1/43	55.00	1.50	
	5- 3-43	56.50	5/1-6/1/43	55.00	1.50	
	6- 3-43	56.50	6/1-7/1/43	55.00	1.50	
						$12.00

EL CAPITAN APARTMENTS, 3210 GIRARD AVENUE SOUTH, MINNEAPOLIS, MINNESOTA—Continued

46 APARTMENT 304

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
James M. Miller	11- 2-42	$56.50	11/1-12/1/42	$55.00	$1.50	
	12- 4-42	56.50	12/1-1/1/43	55.00	1.50	
	1- 3-43	56.50	1/1-2/1/43	55.00	1.50	
	2- 1-43	56.50	2/1-3/1/43	55.00	1.50	
	3- 1-43	56.50	3/1-4/1/43	55.00	1.50	
	4- 4-43	56.50	4/1-5/1/43	55.00	1.50	
	5- 3-43	56.50	5/1-6/1/43	55.00	1.50	
	6- 1-43	56.50	6/1-7/1/43	55.00	1.50	
						$12.00

DUPONT COURT APARTMENTS, 1101–1105 WEST 28TH STREET, MINNEAPOLIS, MINNESOTA

APARTMENT 102

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Mr.-Mrs. Guy L. Rice	11- 9-42	$52.50	11/1-12/1/42	$45.00	$7.50	
	12-10-42	52.50	12/1-1/1/43	45.00	7.50	
	1- 9-43	52.50	1/1-2/1/43	45.00	7.50	
	2-10-43	52.50	2/1-3/1/43	45.00	7.50	
	3-10-43	52.50	3/1-4/1/43	45.00	7.50	
	4-10-43	50.00	4/1-5/1/43	45.00	5.00	
	5-10-43	50.00	5/1-6/1/43	45.00	5.00	
	6-10-43	50.00	6/1-7/1/43	45.00	5.00	
						$52.50

47 APARTMENT 104

T. A. Regnier	10-31-42	$58.00	11/1-12/1/42	$43.00	$15.00	
	12- 6-42	58.00	12/1-1/1/43	43.00	15.00	
	1- 2-43	58.00	1/1-2/1/43	43.00	15.00	
	2- 8-43	58.00	2/1-3/1/43	43.00	15.00	
	3- 5-43	58.00	3/1-4/1/43	43.00	15.00	
	4- 4-43	58.00	4/1-5/1/43	43.00	15.00	
	5- 8-43	58.00	5/1-6/1/43	43.00	15.00	
	6- 7-43	58.00	6/1-7/1/43	43.00	15.00	
						$120.00

BRONZIN APARTMENTS, 125 OAK GROVE STREET, MINNEAPOLIS, MINNESOTA

APARTMENT 103

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Frank H. Page	11- 1-42	$45.00	11/1-12/1/42	$42.50	$2.50	
	12- 1-42	45.00	12/1-1/1/43	42.50	2.50	
	1- 1-43	45.00	1/1-2/1/43	42.50	2.50	
	2- 1-43	45.00	2/1-3/1/43	42.50	2.50	
	3- 1-43	45.00	3/1-4/1/43	42.50	2.50	
	4- 1-43	45.00	4/1-5/1/43	42.50	2.50	
	5- 1-43	45.00	5/1-6/1/43	42.50	2.50	
	6- 1-43	45.00	6/1-7/1/43	42.50	2.50	
						$20.00

GRANADA APARTMENTS, 1456 LAGOON AVENUE, MINNEAPOLIS, MINNESOTA

APARTMENT 87

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Sophie Riese and Rose Riese	11- 5-42	$47.50	11/1-12/1/42	$46.00	$1.50	
	12- 4-42	47.50	12/1-1/1/43	46.00	1.50	
	1- 5-43	47.50	1/1-2/1/43	46.00	1.50	
	2- 4-43	47.50	2/1-3/1/43	46.00	1.50	
	3- 5-43	47.50	3/1-4/1/43	46.00	1.50	
	4- 5-43	47.50	4/1-5/1/43	46.00	1.50	
	5- 5-43	47.50	5/1-6/1/43	46.00	1.50	
	6- 5-43	47.50	5/1-7/1/43	46.00	1.50	
						$12.00

APARTMENT 305

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Lowell F. Wood	11-17-42	$15.00	12/1-1/1/43	$47.50	$5.00	
	11-21-42	37.50				
	1- 4-43	52.50	1/1-2/1/43	47.50	5.00	
	2- 2-43	52.50	2/1-3/1/43	47.50	5.00	
	3- 1-43	52.50	3/1-4/1/43	47.50	5.00	
	4- 1-43	52.50	4/1-5/1/43	47.50	5.00	
	5- 3-43	52.50	5/1-6/1/43	47.50	5.00	
	6- 1-43	52.50	6/1-7/1/43	47.50	5.00	
						$35.00

49 EMERSON COURT APARTMENTS, 1115–1125 WEST 28TH STREET, MINNEAPOLIS, MINNESOTA

APARTMENT 201

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Lloyd W. Olson and Edith Olson.	11-5-42	$62.50	11/1 12/1/42	$53.50	$9.00	
	12-5-42	62.50	12/1-1/1/43	53.50	9.00	
	1-4-43	62.50	1/1-2/1/43	53.50	9.00	
	2-5-43	62.50	2/1-3/1/43	53.50	9.00	
	3-5-43	62.50	3/1-4/1/43	53.50	9.00	
	4-5-43	62.50	4/1-5/1/43	53.50	9.00	
	5-5-43	62.50	5/1-6/1/43	53.50	9.00	
	6-5-43	62.50	6/1-7/1/43	53.50	9.00	
						$72.00

MARTINIQUE APARTMENTS, 2880 JAMES AVENUE SOUTH, MINNEAPOLIS, MINNESOTA

APARTMENT 103

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Mrs. Alice Gilmore	11-14-42	$40.00	11/1-12/1/42	$35.00	$5.00	
	12-16-42	40.00	12/1-1/1/43	35.00	5.00	
	1-15-43	40.00	1/1-2/1/43	35.00	5.00	
	2-16-43	40.00	2/1-3/1/43	35.00	5.00	
	3-15-43	40.00	3/1-4/1/43	35.00	5.00	
	4-15-43	40.00	4/1-5/1/43	35.00	5.00	
	5-17 43	40.00	5/1-6/1/43	35.00	5.00	
	6-16-43	40.00	6/1-7/1/43	35.00	5.00	
						$40.00

50 APARTMENT 201

Ira A. Desper	11-9-42	$58.50	11/1-12/1/42	$52.50	$6.00	
	12-5-42	58.50	12/1-1/1/43	52.50	6.00	
	1-4-43	58.50	1/1-2/1/43	52.50	6.00	
	2-5-43	58.50	2/1-3/1/43	52.50	6.00	
	3-6-43	58.50	3/1-4/1/43	52.50	6.00	
	4-5-43	58.50	4/1-5/1/43	52.50	6.00	
	5-8-43	58.50	5/1-6/1/43	52.50	6.00	
	6-5-43	58.50	6/1-7/1/43	52.50	6.00	
						$48.00

MARTINIQUE APARTMENTS, 2880 JAMES AVENUE SOUTH, MINNEAPOLIS, MINNESOTA—Continued

APARTMENT 206

Tenant	Date paid	Amount paid	Rental period	Maximum rent	Amount overceiling	Total overceiling per apartment
Mrs. C. M. Sullivan and Marian O. Sullivan	10-30-42	$10.00	11/1-12/1/42	$30.00	$10.00	
	11- 3-42	30.00				
	12- 5-42	40.00	12/1-1/1/43	30.00	10.00	
	1- 6-43	40.00	1/1/43-2/1/43	30.00	10.00	
	2-11-43	40.00	2/1-3/1/43	30.00	10.00	
	3- 4-43	40.00	No card record	30.00	10.00	
Beth Tanner & Jean Craig	4- 3-43	46.50	4/1-5/1/43	30.00	16.50	
	5- 4-43	46.50	5/1-6/1/43	30.00	16.50	
	6- 7-43	46.50	6/1-7/1/43	30.00	16.50	
						$99.50

APARTMENT 304

Raymond B. Cox	10/30/42	$47.50	11/1-12/1/42	$42.50	$5.00	
	12/ 3/42	47.50	12/1-1/1/43	42.50	5.00	
	1/ 2/43	47.50	1/1-2/1/43	42.50	5.00	
	2/ 1/43	47.50	2/1-3/1/43	42.50	5.00	
	3/ 1/43	47.50	3/1-4/1/43	42.50	5.00	
	4/ 2/43	47.50	4/1-5/1/43	42.50	5.00	
	5/ 1/43	47.50	5/1-6/1/43	42.50	5.00	
	6/ 1/43	47.50	6/1-7/1/43	42.50	5.00	
						$40.00

APARTMENT 305

Maurice E. Grochau	11/10/42	$47.50	11/1-12/1/42	$43.50	$4.00	
	12/11/42	47.50	12/1-1/1/43	43.50	4.00	
	1/ 9/43	47.50	1/1-2/1/43	43.50	4.00	
	2/ 5/43	47.50	2/1-3/1/43	43.50	4.00	
	3/11/43	47.50	3/1-4/1/43	43.50	4.00	
						$20.00

52 *Exhibit "B"*

WARNER HOLDING COMPANY

1222-24-26 Baker Building

MINNEAPOLIS, MINNESOTA

SEPTEMBER 24, 1943.

MRS. ELIZABETH HOFFMAN,
Apartment #111,
1101 West 28th Street, Minneapolis, Minnesota.

DEAR-MADAM:

Assuming that the Emergency Price Control Act of 1942 is unconstitutional in whole, or in part respecting rents, we formally request the apartment you are now occupying to be vacated October 31, 1943.

We have claimed and believe that the Emergency Price Control Act of 1942 as respects rents and the confiscatory and ridiculous regulations issued by the Administrator and promulgated under and by virtue of the said Act, are unconstitutional and void. Litigation is pending whereby we are testing the legality of the Act. It is our intention to present the matter to the highest court in the land.

This is to notify you that if the Emergency Price Control Act of 1942 as respects rents is finally adjudged unconstitutional, and you elect to stay in our apartment against our wishes, beyond October 31, 1943, that you are obligated to us for ten months' rent at a cost to you of $900.00, plus 40% extra for attorney's fees, if necessary to employ an attorney to collect the same, payable in installments of $45.00 each and every month if paid later than the 5th of the month in which the installment is due, or $40.00 each and every month if paid on or before the 5th of the month in which it is due, up and until July 1, 1944, when the balance of $900.00 will be due and payable for the period October 31, 1943 to August 31, 1944.

As and if the Emergency Price Control Act of 1942 is finally adjudged constitutional in its entirety, or as respecting rents, you would be safe in arbitrarily staying in our building, contrary to our wishes, and notices in the matter. However, we have
53 no desire to have you continue residing in our premises, and much prefer that you vacate the apartment on October 31, 1943, as requested.

Yours truly,

WARNER HOLDING COMPANY,
(S) H. L. WARNER, *Pres.*

[File endorsement omitted.]

In the District Court of the United States for the District of Minnesota, Fourth Division

No. 884—Civil Action

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PLAINTIFF

vs.

WARNER HOLDING COMPANY, A CORPORATION, DEFENDANT

Judgment

November 10, 1944

Pursuant to Findings of Fact, Conclusions of Law and Order for Judgment, heretofore entered and filed in this matter on November 8th, 1944,

It Is Hereby Ordered, Adjudged, And Decreed that the defendant, its agents, servants, and employees, and all persons in active concert or participation with it, be permanently enjoined from, directly or indirectly:

(a) demanding or receiving, or attempting to demand or receive, rent for any housing accommodations in excess of the maximum rent established therefor by any Regulation or Order of the Office of Price Administration;

(b) evicting or attempting to evict tenants of defendant from any housing accommodations in violation of any Regulation or Order of the Office of Price Administration;

and ordering and directing defendant

(c) to file with the Area Rent Office at Minneapolis, Minnesota, within sixty (60) days after service of the writ of injunction, a registration statement on the form provided therefor by said Office, for each housing accommodation now owned by de-
54 fendant having a maximum rent determined by a rental agreement providing for a discount, and to set forth in said registration statement, the maximum rent of said housing accommodations in such manner as to show the terms of said discount provisions, and that a Writ of Permanent Injunction be accordingly issued forthwith.

It Is Further Ordered That that part of plaintiff's prayer for relief, requiring defendant

"to tender to such persons as are entitled thereto a refund of all amounts collected by defendant from tenants as rent for the use and occupancy of housing accommodations in excess of the maxi-

mum rents established by said Regulation, provided, however, that defendant shall not be required to make such tender to any person who has commenced an action against defendant under Section 205 (e) of the Emergency Price Control Act of 1942 alleging the collection by defendant of rent in excess of the maximum rents established by said Regulation" be denied.

Dated: November 10th, 1944.

MATTHEW M. JOYCE,
United States District Judge.

[File endorsement omitted.]

In the District Court of the United States for the District of Minnesota

[Title omitted.]

Notice of appeal

Filed Jan. 31, 1945

Notice is hereby given that Chester Bowles, Administrator, Office of Price Administration, plaintiff above named, ap-
55 peals to the Circuit Court of Appeals for the Eighth Circuit from that portion of the judgment entered in this action on November 10, 1944, whereby the court denied a part of plaintiff's prayer for relief, such portion of the judgment appealed from being as follows:

"It Is Further Ordered that that part of plaintiff's prayer for relief, requiring defendant

"to tender to such persons as are entitled thereto a refund of all amounts collected by defendant from tenants as rent for the use and occupancy of housing accommodations in excess of the maximum rents established by said Regulation, provided, however, that defendant shall not be required to make such tender to any person who has commenced an action against defendant under Section 205 (e) of the Emergency Price Control Act of 1942 alleging the collection by defendant of rent in excess of the maximum rents established by said Regulation" be denied.

HARRY E. WITHERELL,
HARRIS J. NUERNBERG,
ABRAHAM H. MALLER,
Attorneys for Plaintiff.
Office of Price Administration,
226 W. Jackson Boulevard, Chicago 6, Illinois.

Copy of this Notice of Appeal mailed to R. H. Fryberger, Esq., Attorney at Law, 1110 Baker Bldg., Minneapolis, Minnesota this 31st day of January, 1945.

THOMAS H. HOWARD,
Clerk,
By CHELL M. SMITH,
Chief Deputy.

[File endorsement omitted.]

56 In the District Court of the United States,
for the District of Minnesota

[Title omitted.]

Statement of points to be relied on upon appeal

Filed Feb. 28, 1945

Comes now the plaintiff and designates the following points to be relied on upon the appeal herein:

1. That the Court erred in concluding as a matter of law that it lacked the power to make an order requiring defendant to tender to persons a refund of amounts collected by defendant as rent in excess of the maximum amounts established by the rent regulation.

2. That the Court erred in denying the plaintiffs thereafter an order directing said defendant to refund to its tenants the amounts collected by it as rent in excess of the maximum rents established by the rent regulation.

THOMAS I. EMERSON,
Deputy Administrator for Enforcement,
FLEMING JAMES, JR.,
Director, Litigation Division,
DAVID LONDON,
Chief, Appellate Branch,
RALPH M. MCCAREINS,
Attorney,
Office of Price Administration, Washington 25, D. C.
HARRY E. WITHERELL,
Regional Litigation Attorney,
ABRAHAM H. MALLER,
Attorney,
226 W. Jackson Blvd., Chicago 6, Illinois.

[File endorsement omitted.]

57 IN UNITED STATES DISTRICT COURT

Designation of matters to be contained in transcript on appeal

(Filed Feb. 28, 1945)

Comes now the plaintiff and designates the following portions of the record herein as the record on appeal to the Circuit Court of Appeals for the Eighth Circuit:

1. Amended and supplemental complaint filed November 27, 1943.
2. Answer to amended and supplemental complaint filed December 18, 1943.
3. The memorandum decision of the Court filed October 26, 1944.
4. The findings of fact, conclusions of law and order for judgment filed November 8, 1944.
5. The judgment entered November 10, 1944.
6. Notice of appeal.
7. Statement of points.
8. This designation.
9. Proof of service of statement of points and of this designation.
10. Any order that may be entered extending time for filing of record on appeal and docketing action, and any notice, motion and stipulation upon which any such order may be based.
11. Clerk's certificate of record.

THOMAS I. EMERSON,
Deputy Administrator for Enforcement,
FLEMING JAMES, JR.,
Director, Litigation Division,
DAVID LONDON,
Chief, Appellate Branch,
RALPH M. MCCAREINS,
Attorney,
Office Of Price Administration, Washington 25, D. C.

58

HARRY E. WITHERELL,
Regional Litigation Attorney,
ABRAHAM H. MALLER,
Attorney,
226 West Jackson Boulevard, Chicago 6, Illinois.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

Notice to defendant of filing of designation of record and statement of points

Filed Feb. 28, 1945

To: R. H. FRYBERGER and M. R. KEITH,
1101 Baker Building, Minneapolis, Minnesota,
Attorneys for Defendant-Appellee.

Please Take Notice that we have this day mailed to the Office of the Clerk of the United States District Court for the District of Minnesota, Fourth Division, Minneapolis, Minnesota, an original and copy of Appellant's Designation of Record and Statement of Points to be Relied on Upon Appeal. A copy of each of said documents is hereto attached and herewith served upon you.

THOMAS I. EMERSON,
Deputy Administrator for Enforcement,
FLEMING JAMES, JR.,
Director, Litigation Division,
DAVID LONDON,
Chief, Appellate Branch,
RALPH M. MCCAREINS,
Attorney,
Office Of Price Administration, Washington 25, D. C.
HARRY E. WITHERELL,
Regional Litigation Attorney,
ABRAHAM H. MALLER,
Attorney,
226 West Jackson Boulevard, Chicago 6, Illinois.

59 STATE OF ILLINOIS,
County of Cook, ss:

Elsie Tuckman being first duly sworn, on oath deposes and says that she served the within notice upon the within named R. H. Fryberger and M. R. Keith by placing a true and correct copy thereof, together with a true and correct copy of the Designation of Record and Statement of Points to be Relied on Upon Appeal, therein referred to, in a government franked envelope addressed to said R. H. Fryberger and M. R. Keith, 1110 Baker Building, Minneapolis, Minnesota, and placing said envelope, duly sealed in

the United States mail box at the southeast corner of Franklin Street and Jackson Boulevard, Chicago, Illinois, this 26th day of February 1945, at about the hour of 5:30 o'clock p. m.

ELSIE TUCKMAN.

Subscribed and sworn to before me this 26th day of February 1945.

[NOTARIAL SEAL]

A. H. Maller,
Notary Public.
A. H. MALLER,
Notary Public, Cook County, Illinois.

[File endorsement omitted.]

In United States District Court

Stipulation to amend designation and include additional matters in transcript on appeal

Filed March 28, 1945

Whereas, on February 28, 1945, the plaintiff in the above-entitled action filed a Designation of Record in the above matter for the purposes of appeal, and

Whereas, there was omitted from said Designation of Record the amendment to the prayer of plaintiff's Amended and Supplemental Complaint, which amendment was filed May 11, 1942,

Now Therefore, It Is Hereby Stipulated And Agreed by and between the parties to the above-entitled action, through their respective attorneys:

1. That said Designation of Record be amended so as to include:

60 (a) The said amendment to the prayer of plaintiff's Amended and Supplemental Complaint, filed May 11, 1942;

(b) This stipulation;

(c) The Amended Designation of Record which will be filed simultaneously with this stipulation as hereinafter more particularly referred to.

2. That plaintiff may prepare and file an Amended Designation of Record which shall include, in addition to all of the items appearing on the original Designation of Record, the amendment to the prayer of plaintiff's Amended and Supplemental Complaint, filed May 11, 1942, this stipulation, and said Amended Designation of Record.

Dated this 26th day of March 1945.

HARRY WITHERELL,
Regional Litigation Attorney,
ABRAHAM H. MALLER,
Attorney,
Office of Price Administration, Chicago 6, Illinois.
HYMEN L. GREENBERG,
Litigation Attorney,
Office of Price Administration, St. Paul 1, Minnesota.
R. H. FREYBERGER and
M. R. KEITH,
Attorneys for Defendant,
THOMAS I. EMERSON,
Deputy Administrator for Enforcement,
FLEMING JAMES, JR.,
Director, Litigation Division,
DAVID LONDON,
Chief, Appellate Branch,
RALPH M. MCCAREINS,
Attorney,
Office of Price Administration, Washington 25, D. C.

61 In United States District Court

[File endorsement omitted.]

Order enlarging time within which to docket record in Circuit Court of Appeals

Filed March 6, 1945

For good cause shown, it is

Ordered: that the time within which to docket the record on appeal in the above entitled cause be, and the same is hereby enlarged to and including the 21st day of April, 1945.

Dated: March 6, 1945.

MATTHEW M. JOYCE,
Judge, U. S. District Court.

[File endorsement omitted.]

In United States District Court

Amended designation of matters to be contained in transcript on appeal

Filed March 28, 1945

Comes now the plaintiff and designates the following portions of the record herein as the record on appeal to the Circuit Court of Appeals for the Eighth Circuit:

1. Amended and supplemental complaint filed November 27, 1943.
2. Answer to amended and supplemental complaint filed December 18, 1943.
3. Amendment to the prayer of Amended and Supplemental Complaint, filed May 11, 1944.
4. The memorandum decision of the Court filed October 26, 1944.
5. The findings of fact, conclusions of law and order for judgment filed November 8, 1944.
6. The judgment entered November 10, 1944.
7. Notice of appeal.
8. Statement of points.
9. Designation of record filed February 28, 1945.

62 10. Proof of service of statement of points and designation of record filed February 28, 1945.

11. Stipulation to amend designation of record, filed March 28, 1945.
12. This amended designation of record.
13. Proof of service of this amended designation of record.
14. Any order that may be entered extending time for filing of record on appeal and docketing action, and any notice, motion and stipulation upon which any such order may be based.
15. Clerk's certificate of record.

HARRY WITHERELL,
Regional Litigation Attorney.
ABRAHAM H. MALLER,
Attorney.
Office of Price Administration, Chicago 6, Illinois.
HYMEN L. GREENBERG,
Litigation Attorney.
Office of Price Administration, St. Paul 1, Minnesota.
THOMAS I. EMERSON,
Deputy Administrator for Enforcement.
FLEMING JAMES, JR.,
Director, Litigation Division.
DAVID LONDON,
Chief, Appellate Branch.
RALPH M. MCCAREINS,
Attorney,
Office of Price Administration, Washington 25, D. C.

63 STATE OF MINNESOTA,
County of Ramsey, ss:

Ruth M. Buettner being first duly sworn, on oath deposes and says that she served the attached amended designation of record on R. H. Fryberger and M. R. Keith by placing a true and correct

copy thereof in a government franked envelope addressed to R. H. Fryberger and M. R. Keith, 1110 Baker Building, Minneapolis, Minnesota, and placing said envelope, duly sealed, in the United States mail box located on the first floor of the First National Bank Building, Saint Paul, Minnesota, this 28th day of March, 1945, at about the hour of 11:30 o'clock A. M.

RUTH M. BUETTNER.

Subscribed and sworn to before me this 28th day of March 1945.

[NOTARIAL SEAL] L. F. YOUNG,
Notary Public, Ramsey County, Minn.

My commission expires Feb. 18, 1948.

[File endorsement omitted.]

[Clerk's certificate to foregoing transcript omitted in printing.]

65 [Appearances of counsel omitted in printing.]

67 In United States Circuit Court of Appeals, Eighth Circuit

Order of submission

September 10, 1945.

This cause having been called for hearing in its regular order, argument was commenced by Mr. R. M. McCareins, Special Litigation Counsel, Office of Price Administration, for appellant, continued by Mr. R. H. Fryberger for appellee, and concluded by Mr. R. M. McCareins, Special Litigation Counsel, Office of Price Administration, for appellant.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

68 In United States Circuit Court of Appeals, Eighth Circuit

No. 13087

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, APPELLANT

vs.

WARNER HOLDING COMPANY, A CORPORATION, APPELLEE

Appeal from the District Court of the United States for the District of Minnesota

Mr. R. M. McCareins, Special Litigation Counsel, Office of Price Administration (Mr. George Moncharsh, Deputy Administrator for Enforcement, O. P. A., Mr. Fleming James, Jr., Director,

Litigation Division, O. P. A., Mr. David London, Chief, Appellate Branch, O. P. A., Mr. Harry Witherell, Regional Litigation Attorney, O P. A., and Mr. Harris Nuernberg, District Enforcement Attorney, O. P. A., were with him on the brief) for Appellant.

Mr. R. H. Fryberger (Mr. M. R. Keith and Mr. G. W. Townsend were with him on the brief) for Appellee.

Before GARDNER, SANBORN, and THOMAS, Circuit Judges.

Opinion

October 31, 1945

69 SANBORN, Circuit Judge, delivered the opinion of the Court.

This is an action brought by the Administrator of the Office of Price Administration, under § 205 (a)[1] of the Emergency Price Control Act of 1942 [56 Stat. 23, 33; 50 U. S. C. A. Appendix § 925 (a)], to compel compliance with § 4 (a)[2] of the Act. The question for decision is whether the District Court erred in refusing to order the defendant (appellee) to tender to tenants, from whom it had collected rentals in excess of the maximum permitted by the applicable regulation, the amounts which they had been overcharged.

The appellee, Warner Holding Company (which will be referred to as "defendant"), owns eight apartment buildings in the city of Minneapolis, containing about 250 dwelling units. Maximum Rent Regulation 53 (7 F. R. 8596), redesignated as "Rent Regulation for Housing" (8 F. R. 7822), prescribed, on and after November 1, 1942, maximum rents for defendant's housing accommodations. Between November 1, 1942, and June 29, 1943, the defendant demanded and collected rents in excess of those

70 permitted by the regulation. For some time prior to June 29, 1943, the defendant had knowledge of the amounts of the overcharges collected and of the tenants from whom the overcharges had been collected. The defendant has failed and refused to tender to such tenants refunds of the overcharges.

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[1] Section 205 (a) reads as follows:
"Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

[2] Section 4 (a) [56 Stat. 28; 50 U. S. C. A. Appendix § 904 (a)] reads as follows:
"It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

The Administrator commenced this action on February 13, 1943. On June 29, 1943, the District Court granted a preliminary injunction against the defendant, restraining it from collecting rents in excess of those permitted by the regulation. Brown v. Warner Holding Co., 50 F. Supp. 593. After a trial in May, 1944, the court found the issues in favor of the Administrator, and entered a judgment granting him the injunctive relief which he sought, except that the court denied the prayer of the Administrator that the defendant be required "to tender to such persons as are entitled thereto a refund of all amounts collected by defendant from tenants as rent for the use and occupancy of housing accommodations in excess of the maximum rents established by said Regulation, provided, however, that defendant shall not be required to make such tender to any person who has commenced an action against defendant under Section 205 (e)[3] of the
71 Emergency Price Control Act of 1942 alleging the collection by defendant of rent in excess of the maximum rents established by said regulation."

The Administrator has appealed from that portion of the judgment which denied his prayer for an order requiring the defendant to tender refunds of overcharges.

The District Court, in effect, construed the Act as providing two specific civil remedies or causes of action, the first, under § 205 (a), in favor of the Administrator, for injunctive relief to

---

[3] Section 205 (e), 56 Stat. 34, provided:

"If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer is not entitled to bring suit or action under this subsectioon, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act."

Section 205 (e) was amended June 30, 1944 [§ 108 (b), 58 Stat. 640; 50 U. S. C. A. Appendix § 925 (e)]. The section as amended contains the following provision:

"* * * If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered."

The violations here in suit were all committed prior to June 30, 1944, the effective date of the amendment.

enforce compliance; and the second, under § 2205 (e), primarily in favor of persons who had been overcharged, to obtain adequate redress and the expense of procuring it. The court was of the opinion that these remedies were intended to be and were exclusive of other civil remedies to enforce compliance or to redress past violations, and that § 205 (a) did not, either expressly or impliedly, authorize the Administrator to apply for, or the court to grant, an order requiring the defendant to tender refunds of rental overcharges collected from its tenants prior to June 29, 1943, the date when the defendant was, by the preliminary injunction, compelled to desist from demanding rentals in excess of the maximum.

72 The contention of the Administrator is, in substance, that by § 205 (a) the District Court was granted complete power to effectuate the policy and purpose of the Act; that a proceeding under § 205 (a) is an appeal to the equity jurisdiction of the court and to its discretion (Hecht Co. v. Bowles, 321 U. S. 321, 329); that language in other statutes authorizing the court "to prevent and restrain violation," has been held to confer full equity powers upon the court to effectuate the purposes of the statute (United States v. United States Steel Corporation, 251 U. S. 417, 452; United States v. Bausch & Lomb, Optical Co., 321 U. S. 707; Walling v. Miller, 8 Cir., 138 F. 2d 629, 633; Fleming v. Alderman, (D. C. Conn.) 51 F. Supp. 800; Walling v. O'Grady, 2 Cir., 146 F. 2d 422); that plenary jurisdiction to effectuate the policy of a statute includes power to restore the status quo; that this enforcement action is a statutory proceeding in the public interest looking to public ends, to which the right of jury trial does not apply (Agwilines, Inc. v. National Labor Relations Board, 5 Cir., 87 F. 2d 146, 151); and that the remedy given by § 205 (e) of the Act to those who are overcharged does not affect the power of the court, in an action brought under § 205 (a), to order restitution to effectuate the purpose of the Act.

The defendant argues that there is no language in § 205 (a) to justify a conclusion that the court was granted the power to order restitution of overcharges; that the plenary power granted to effectuate the purpose of a statute must be predicated upon jurisdiction of the subject matter and of all interested parties; that, since the rights of tenants are here involved, no order of restitution could be entered in the absence of jurisdiction over them; and that equitable relief to restore status can be had only as between those who are parties to the action.

The problem presented is one with respect to which there is a difference of informed opinion. The views of the District
73 Court and of the defendant find support in Bowles, Administrator v. Skaggs, (D. C. W. D. Ky.) 59 F. Supp. 4. The case of Office of Price Administration v. Georgian Hotel Co., (D. C. Mass), 60 F. Supp. 155, sustains the position of the Administrator. The Administrator is of the opinion that the concurring opinion in Walling v. Miller, 8 Cir., 138 F. 2d 629, 633, and the cases of Fleming v. Alderman, (D. C. Conn.) 51 F. Supp. 800, and Walling v. O'Grady, 2 Cir., 146 F. 2d 422, all of which dealt with the Fair Labor Standards Act, clearly indicate that the District Court had the power to order restitution of overcharges in connection with granting injunctive relief.

That the reparation order which the Administrator sought would have been in the public interest, would have been appropriate, and would have required the defendant to do no more than it should voluntarily have offered to do to bring itself into compliance with the Act from the time the rent regulation became effective, is, we think, beside the point. The question is whether Congress in § 205 (a) of the Act authorized the Administrator to apply for, and empowered the court to grant, reparation orders as a means of enforcing compliance with the Act.

The Administrator is seeking to enforce a right created by the Act. Concededly, he is proceeding in his own behalf under § 205 (a). That section, which is sufficiently specific, governs the procedure in enforcement actions brought by the Administrator in both state and federal courts, and it is fair to assume that the language of the section expressed with substantial accuracy the intent of Congress as to the nature of the remedy which the Administrator was authorized to seek from the courts in order to enforce compliance with the Act. See Hecht Co. v. Bowles, 321 U. S. 321, 330. At the time this legislation was enacted, Congress apparently believed that the remedy afforded the Adminis-
74 trator by § 205 (a) to enforce compliance by procuring injunctive orders or their equivalents (see Hecht Co. v. Bowles, supra, page 328 of 321 U. S.), and the remedy furnished by § 205 (e) to those who were overcharged and were entitled to sue (and to the Administrator if they were not entitled to sue) to recover damages and expenses, would constitute adequate civil remedies to effectuate the purposes of the Act. Evidently it was found that § 205 (e) as originally enacted was ineffective, and it was therefore amended so that the Administrator might enforce the remedy provided by that section if the persons who were entitled to it failed to act promptly. The fact that Congress amended § 205 (e) so as to enlarge the right of the Administrator to secure

the reparations therein provided for, militates against his contention here that under § 205 (a) he always had the right to seek, and the court the power to grant, reparation orders to effectuate the purpose of the Act.

It is well settled "That where a statute creates a right and provides a special remedy, that remedy is exclusive. Wilder Manufacturing Co. v. Corn Products Refining Co., 236 U. S. 165, 174–175; Arnson v. Murphy, 109 U. S. 238; Barnet v. National Bank, 98 U. S. 555, 558; Farmers' & Mechanics' National Bank v. Dearing, 91 U. S. 29, 35." United States v. Babcock, 250 U. S. 328, 331. See, also, Hassel, v. United States, 3 Cir., 34 F. 2d 34, 36 and cases cited. The rule is stated in 50 Am. Jur., Statutes, § 596, pages 593–594, as follows: "It is an established principle, that if a statute creating a new right or cause of action where none existed before, also provides an adequate remedy for the enforcement of the right created, and the statutory remedy is not by its terms cumulative, the remedy thus prescribed is exclusive. In such case, such remedy must be pursued in the enforcement of the right to the exclusion of any other remedy."

75 It is our opinion that this established rule of law governs this case and that § 205 (a) provides a specific and exclusive statutory remedy for enforcing compliance with the Act. We also think that § 205 (a) discloses no intent on the part of Congress to make reparation orders available to the Administrator. This Court cannot enlarge the statutory scheme of enforcement. see Globe Newspaper Co. v. Walker, 210 U. S. 356, 364.

We do not regard the views which we have expressed as inconsistent with Walling v. O'Grady, supra, 146 F. 2d 422, or the other cases dealing with the Fair Labor Standards Act, upon which the Administrator relies. It is true that those cases hold that, under that Act, in actions brought by the Administrator of the Wage and Hour Division to restrain violations, reparation orders may be granted in connection with injunctive relief. However § 17 of the Fair Labor Standards Act (52 Stat. 1069; 29 U. S. C. A. § 217) authorizes the federal district courts, broadly, "to restrain violations". The statutory remedy may thus be regarded as general and cumulative, rather than special and exclusive. It is to be noted that in Walling v. O'Grady, supra, page 423 of 146 F. 2d, the court was careful to distinguish the case from that of Decorative Stone Co. v. Building Trades Council, 2 Cir., 23 F. 2d 426, in which it was held that the statutory remedies prescribed by the Clayton Act were exclusive.

The judgment appealed from is affirmed.

76 In United States Circuit Court of Appeals, Eighth Circuit

No. 13087—September Term, 1945

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, APPELLANT

vs.

WARNER HOLDING COMPANY, A CORPORATION

Appeal from the District Court of the United States for the District of Minnesota

Judgment

October 31, 1945

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Minnesota, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed without costs to either of the parties in this Court.

77 [Clerk's certificate to foregoing transcript omitted in printing.]

78 Supreme Court of the United States

Order allowing certiorari

Filed March 11, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.

(Endorsement on cover:) File No. 50496. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 793. Paul A. Porter, Administrator, Office of Price Administration, Petitioner *vs.* Warner Holding Company. Petition for a writ of certiorari and exhibit thereto. Filed January 30, 1946. Term No. 793 O. T. 1945.

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No. 793

In the Supreme Court of the United States

OCTOBER TERM, 1945

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

v.

WARNER HOLDING COMPANY, A CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 793

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

v.

WARNER HOLDING COMPANY, A CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Chester Bowles, Price Administrator of the Office of Price Administration, petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Eighth Circuit in the above entitled case entered on October 31, 1945, affirming a decision of the District Court of Minnesota.

OPINIONS BELOW

The opinion of the District Court (R. 25–36) is reported in 60 F. Supp. 513. The opinion of the Circuit Court of Appeals (R. 66–71) is reported in 151 F. 2d 529.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 31, 1945 (R. 71-72). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 25, 1925.

QUESTION PRESENTED

Whether the power granted the court under Section 205 (a) of the Emergency Price Control Act to issue an injunction or "other order" to enforce compliance with the Act, where a person has engaged in acts constituting a violation thereof, includes the power to order restitution of overcharges made by a seller or landlord.

STATUTE INVOLVED

The statute involved is the Emergency Price Control Act of 1942, (56 Stat. 23, 33; 50 U. S. C. App. 901 et seq. as amended by the Stabilization Extension Act of 1944, 58 Stat. 640, 50 U. S. C. App. 901 et seq.).

Pertinent provisions of the statute are Sections 4 (a), 205 (a), and 205 (e).

Section 4 (a) provides:

> It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or

to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (2) or section 205 (f); or to offer, solicit, attempt, or agree to do any of the foregoing.

Section 205 (a) provides:

> Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Section 205 (e) prior to amendment provides:

> If any person, selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the

amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court. * * * If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or prices and the buyer is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States.

Section 205 (e) as amended by the Stabilization Extention Act of 1944, Pub. Law No. 383, 50 U. S. C. App. Sec. 925 (e) provides:

If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor

more than $50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent

jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.

STATEMENT

Respondent, Warner Holding Company, is the owner of eight apartment buildings in the City of Minneapolis, containing an aggregate of approximately 280 dwelling units. Between November 1, 1942 and June 29, 1943 (the date on which a temporary injunction was issued herein), it consistently demanded and received rents in excess of those permitted by the applicable maximum rent regulations issued under the Emergency Price Control Act.[1] (R. 26–32, 36–37.) Respondent having refused to comply with the Act and the regulations, petitioner brought this action to restrain the respondent from continuing to violate them and to compel respondent to refund to its tenants the excess of the rents which it had collected over the legal maximums. (R. 2–6.)

The district court granted an injunction against respondent's continued violation of the Act and

[1] Maximum Rent Regulation 53 (7 F. R. 8596) and the Rent Regulation for Housing (8 F. R. 7322). The former regulation became effective November 1, 1942, and continued in effect until June 1, 1943, when it was superseded by the latter regulation.

regulation but declined to order restitution (R. 35, 41). The Circuit Court of Appeals affirmed the judgment (R. 71).

Both the district court (R. 35) and the Circuit Court of Appeals (R. 70–71) rested their decisions on the ground that they were without power to order restitution.

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals for the Eighth Circuit erred in holding that Section 205 (a) does not empower the court to grant restitution of overcharges as a means of enforcing compliance with the Act.

REASONS FOR GRANTING THE WRIT

1. The decision of the court below is squarely in conflict with a subsequent decision of the Sixth Circuit Court of Appeals in *Bowles* v. *Skaggs*, 151 F. 2d 817, rehearing denied December 10, 1945. The petition for rehearing in the *Skaggs* case called attention to the decision of the Eighth Circuit in the instant case; the Sixth Circuit denied the petition, although it expressly stated that the Eighth Circuit's decision "reaches a conclusion in conflict with ours."[1] In the *Skaggs* case the Sixth Circuit held that the district court in the exercise of its traditional powers could in its discretion order restitution; that there is

[1] The opinion denying a rehearing in the *Skaggs* case, which is not yet reported, is printed in the Appendix to this petition.

nothing in Section 205 (a) which reflects an intent on the part of Congress to restrict such powers; that, on the contrary, it must have been the intent of Congress to afford full opportunity to a court of equity to treat enforcement proceedings under Section 205 (a) of the Act in such a way as would be most responsive to the needs of the public in preventing inflation; and "that to deny the Administrator power to act in cases where, as here, restitution rather than a prohibitory injunction is the only practical remedy, would be to subvert the purposes of the Act."

The decision of the court below is also inconsistent with the decision of the Circuit Court of Appeals for the Second Circuit in *Walling* v. *O'Grady*, 146 F. 2d 422, where restitution was ordered as ancillary to injunctive relief under the Fair Labor Standards Act.[3]

2. The decision below involves a question of importance to the due administration and enforcement of the Emergency Price Control Act. If allowed to stand it will mean that a remedy, which is urgently needed in the enforcement of

[3] The attempt of the court below to distinguish the *O'Grady* case on the ground that Section 17 of the Fair Labor Standards Act (52 Stat. 1069, 29 U. S. C. 217) authorizes the federal district courts broadly, "to restrain violations", cannot be sustained, since the language of the Emergency Price Control Act authorizing the Administrator to apply for an order "enjoining such acts * * *, or for an order enforcing compliance * * *" is even broader in scope.

the Act, and which was clearly intended to be available, may no longer be resorted to. Section 205 (a) of the Act authorizes any court of competent jurisdiction, upon application of the Administrator, to issue, not only an injunction, but "an order enforcing compliance" with the Act. The Section twice grants separate authority to enjoin and to issue other orders, thereby clearly indicating that the power was to do more than enjoin when other types of orders were necessary to bring about compliance. And compliance is not achieved when a violator retains the amount he has overcharged, even though he be restrained from violating in the future. As the Senate Committee on Currency and Banking said, the section gives the courts "jurisdiction to issue *whatever* order to enforce compliance is *proper in the circumstances of each particular case*" (Senate Report 931, 77th Cong. 2d Sess., page 10, italics supplied). In short, the clearly manifested intention of Congress was that the term "other order" as used in Section 205 (a) should be construed in its broadest sense. So construed it plainly authorizes the issuance of affirmative orders enforcing compliance by compelling the undoing of past violations as well as the prevention of future violations.

The holding of the court below that restitution could not be ordered at the suit of the Administrator because the statutory right to recover dam-

ages under Section 205 (e) of the Act (as originally enacted) was vested exclusively in the purchaser, is not supported either by the language of the Act or by its legislative history. The right to compel restitution is wholly separate and distinct from the right granted to purchasers and tenants to recover damages under Section 205 (e). As the Circuit Court of Appeals for the Sixth Circuit said in *Bowles* v. *Skaggs*, 151 F. 2d 817, 821, "An order of restitution is not a judgment for damages or for penalties. It compels compliance and is restoration of the status quo which falls within the recognized power of a court of equity. * * * The Administrator acts in the public interest—the purchaser in his own. The remedies are not irreconcilable." This distinction between remedies created by statute for the vindication of public rights at the suit of a public officer or agency and those provided for the redress of private wrongs at the suit of injured parties, has frequently been recognized by this Court. (See, e. g., *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 319 U. S. 533, 543; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 48, 49. It is a distinction which the court below completely ignored.

The remedy given tenants and consumers by the Act is inadequate to protect the public interest. Purchasers and tenants often are un-

willing either to assume the cost and risk of litigation, or to incur the hostility of a seller and landlord upon whom they are dependent, as the case may be, for the further supply of goods or peaceful enjoyment of the premises. The result is that the remedy granted them would be found wanting to protect the public interest in that large area of cases where strict enforcement is most gravely needed.

Nor does the fact that Section 205 (e) was amended by the Stabilization Extension Act of 1944, so as to permit the Administrator to sue to recover damages for overcharges in cases where the tenant or purchaser fails to sue within 30 days, either indicate that the remedy of compelling restitution did not previously exist or operate to withdraw that remedy. As shown above, Section 205 (a) was amply broad enough to authorize the court to compel restitution at the suit of the Administrator. Cf. *Walling* v. *O'Grady*, 146 F. 2d 422 (C. C. A. 2nd). Section 205 (a) was left intact and there is nothing either in the amendment to Section 205 (e) or in its legislative history which in any way indicates an intention on the part of Congress to restrict the power of the courts thereunder. It is well settled, moreover, that the fact that a legal remedy is subsequently made available by statute in no way restricts the power of a court of equity to grant

relief which it had previously been authorized to grant. (Cf. *American L. Ins. Co.* v. *Stewart*, 300 U. S. 203, 215; *Dawson* v. *Kentucky Distilleries and Warehouse Co.*, 255 U. S. 288, 296; 1 Pomeroy's Equity Jurisprudence (5th Ed.) Section 279).

CONCLUSION

The decision of the court below is in conflict with the decisions of two Circuit Courts of Appeals. It decides a question of importance to the enforcement and administration of the Emergency Price Control Act. It is clearly wrong. For these reasons a writ of certiorari should be granted.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

GEORGE MONCHARSH,
Deputy Administrator for Enforcement.

JANUARY 1946.

APPENDIX

United States Circuit Court of Appeals, Sixth Circuit

No. 10,018

CHESTER BOWLES, ADMINISTRATOR, APPELLANT

vs.

JOHN K. SKAGGS, JR., ADMINISTRATOR OF THE ESTATE OF JOHN K. SKAGGS, SR., APPELLEE

ON PETITION FOR REHEARING

Before SIMMONS and ALLEN, Circuit Judges; RAYMOND, District Judge.

PER CURIAM: The appellee, by petition for rehearing, seeks a reconsideration of our opinion in the above-entitled cause announced November 12, 1945, wherein we held that the Administrator of the Office of Price Administration was possessed of authority, under § 205 (a) of the Emergency Price Control Act of 1942, not only to seek an injunction to restrain similar violations of the Act but to seek affirmative relief by way of restoring to a purchaser the excess of purchase price over maximum ceiling price of commodities, and wherein we held the court empowered in its discretion to grant such relief.

The rehearing petition is grounded solely upon an opinion of the Eighth Circuit Court of Appeals in *Chester Bowles* v. *Warner Holding Co.*, announced October 31, 1945, which was not available at the time of hearing but which reaches a conclusion in conflict with ours.

We have given careful consideration to the cited case. It bears this distinction from the case at bar: The violations there involved were such as could be repeated and an injunction to prevent repetition might well have been considered adequate to vindicate the mandate of the statute and the regulation. The violation in the instant case was a non-recurrent sale of personal property by the Administrator of an estate engaged in liquidating personal property. Without overemphasizing the importance of this distinction and with the utmost respect for the views of the court which decided the Warner case, we adhere to our conclusions in respect to the authority of the Price Administrator and the power of the court in its discretion to grant the affirmative relief sought in the case at bar. Wherefore, the petition for rehearing is denied.

Enter:

CHARLES C. SIMONS.

Filed December 10, 1945.

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No. 793

In the Supreme Court of the United States

OCTOBER TERM, 1945

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, PETITIONER

v.

WARNER HOLDING COMPANY, A CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE PETITIONER

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In the Supreme Court of the United States

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the District Court (R. 19–28) is reported at 60 F. Supp. 513. The opinion of the Circuit Court of Appeals (R. 49–53) is reported at 151 F. 2d 529.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 31, 1945 (R. 54). The petition for a writ of certiorari was filed in this Court on January 30, 1946 (R. 54). Certiorari was granted on March 11, 1946. The jurisdiction of

this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the power of a court under Section 205 (a) of the Emergency Price Control Act to issue an injunction or "other order" to enforce compliance with the Act, where a person has engaged in acts constituting a violation thereof, includes the power to order restitution of overcharges made by a seller or landlord.

STATUTE INVOLVED

The statute involved is the Emergency Price Control Act of 1942 (56 Stat. 23, as amended by the Stabilization Extension Act approved June 30, 1944, 58 Stat. 632, 50 U. S. C. App., Supp. IV, 901 *et seq.*).

Pertinent provisions of the original Act are as follows:

Section 4 (a)—

> It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accomodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accord-

ance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (2) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

Section 205 (a)—

Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Section 205 (e)—

If any person, selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court. For

the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or prices and the buyer is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States.

Section 205 (e) as amended by the Stabilization Extension Act, approved June 30, 1944, 58 Stat. 632, 640–641, 50 U. S. C. App., Supp. IV, 925 (e), provides:

If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than

$25 nor more than $50, as the court in its discretion may determine: *Provided, however,* That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices; and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A

judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.

Section 108 (c) of the Stabilization Extension Act of 1944 provides as follows:

> The amendment made by subsection (b) [to Section 205 (e), *supra*], insofar as it relates to actions by buyers or actions which may be brought by the Administrator only after the buyer has failed to institute an action within thirty days from the occurrence of the violation, shall be applicable only with respect to violations occurring after the date of enactment of this Act. In other cases, such amendment shall be applicable with respect to proceedings pending on the date of enactment of this Act and with respect to proceedings instituted thereafter.

STATEMENT

Respondent, Warner Holding Company, is the owner of eight apartment buildings in the City of Minneapolis, containing an aggregate of approximately 280 dwelling units. Between November 1, 1942 and June 29, 1943 (the date on which a temporary injunction was issued herein), it demanded and received rents in excess of those permitted by the applicable maximum rent regulations issued

under the Emergency Price Control Act.[1] (R. 20–25, 28–30.) Respondent having refused to comply with the Act and the regulations, petitioner on February 13, 1943 (R. 50), brought this action to restrain the respondent from continuing to violate them. The complaint was later amended to seek a decree requiring respondent to tender refunds to its tenants of the excess of the rents which it had collected over the legal maximum (R. 2–5, 18–19).

The District Court granted an injunction against respondent's continued violation of the Act and regulation but declined to order restitution (R. 27–28, 32). The Circuit Court of Appeals affirmed the judgment (R. 53). Both the District Court (R. 28) and the Circuit Court of Appeals (R. 53) rested their decisions on the ground that they were without power to order restitution.

SPECIFICATION OF ERRORS TO BE URGED

1. The court below erred in holding that Section 205 (a) does not empower a court to grant restitution of overcharges as a means of enforcing compliance with the Act.

2. The court below erred in affirming the judgment of the District Court insofar as it denied an order for restitution.

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[1] Maximum Rent Regulation 53 (7 F. R. 8596) and the Rent Regulation for Housing (8 F. R. 7322). The former regulation became effective November 1, 1942, and continued in effect until June 1, 1943, when it was superseded by the latter regulation.

SUMMARY OF ARGUMENT

Section 205 (a) of the Emergency Price Control Act authorizes an appropriate court, upon application by the Administrator, to issue an injunction "or other order" enjoining violations of the Act or "enforcing compliance" with it. Both the terms of the statute, confirmed by its legislative history, and the general powers of a court of equity, which the statute invokes (*Hecht Co.* v. *Bowles*, 321 U. S. 321, 329), authorize a court at the suit of the Administrator to enforce compliance by requiring a violator to refund illegal exactions. Such an order is as definitely contemplated by the statute and is as much a part of the traditional equitable powers as is a prohibitory decree. The effect of the decision below is to make this remedy unavailable and to threaten the vitality of judicial enforcement of other federal statutes, contrary to the principle that a court of equity, when called upon to protect an important public interest, is required to frame its decree so as to effectuate the objectives of the applicable legislation.

The power to require affirmative action, including restoration by means of money payments, has long been established. Although in some of the cases this power was exercised to undo the effects of contempt of a court's previous decree, the same principle is applicable and has been ap-

plied where a positive statutory command or administrative order has been violated.

The presence of Section 205 (e) in the Act, whereby a consumer who has been overcharged may bring an action for treble damages, does not negative the power of the Administrator to seek an order of restitution in an enforcement proceeding. The consumer's damage action, while it was created in order to aid in the enforcement of the Act, vindicates primarily a private right bestowed by the statute. The Administrator, on the other hand, seeks the vindication of the public interest, which may require restitution of illegal exactions. The two remedies are consistent, but distinct.

The 1944 amendment to Section 205 (e) which permits the Administrator to sue for damages for overcharges where tenants or purchasers fail to sue within thirty days does not indicate that the Administrator's power to compel restitution did not previously exist or operate to withdraw that remedy. The precedents relied upon by the court below with reference to the exclusiveness of statutory remedies under certain circumstances, do not support the court's conclusion.

ARGUMENT

The Power Granted the Courts Under Section 205 (a) of the Emergency Price Control Act To Issue an Injunction or "Other Order" "Enforcing Compliance" With the Act Includes the Power To Order Restitution of Overcharges Made by a Seller or Landlord

A. The Language and Legislative History of Section 205 (a) Indicate a Clear Intent on the Part of Congress To Invoke the Traditional Comprehensive Powers of Courts of Equity in Aid of Enforcement

The Emergency Price Control Act was enacted in order, among other purposes, "to stabilize prices" and eliminate "profiteering" (56 Stat. 23, 50 U. S. C. App., Supp. IV, 901). Section 2 of the Act directs the Administrator to promulgate regulations fixing maximum prices for commodities and maximum rental rates for housing accommodations, and Section 4 (a) makes it unlawful for any seller or landlord to exact a price or rent in excess of the maximum price or rent fixed by the applicable regulation.

By Section 205 (a) of the Act, the Price Administrator is authorized to apply to any court of competent jurisdiction for an order "enjoining" violations of the Act and pertinent regulations or for an "order enforcing compliance" with the Act. Upon a showing by the Administrator that persons are violating or are about to violate the Act, the Court may issue "a permanent or temporary injunction, restraining order, or other order" without bond.

Contrary to the view of the court below, Section 205 (a) appears broadly to authorize courts of

equity to issue any prohibitory or mandatory order found necessary to bring about compliance with the Act. The section grants separate authority to enjoin and to issue other orders, thereby clearly indicating that the power is more than one of enjoining future violations. If a violator is permitted to reap the benefits of his wrongdoing, compliance is not achieved even though he is restrained from future violations. Compare *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 189. The statute is designed to prevent such an outcome.

Congress clearly intended that the term "other order" as used in Section 205 (a) should be construed in its broadest sense. The Senate Committee on Currency and Banking stated in its report upon the bill which became the Emergency Price Control Act:

> In common with substantially all regulatory statutes, the bill authorizes the official charged with the duty of administering the act to apply to any appropriate court, State or Federal, for an order enjoining any person who has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of the bill. *Such courts are given jurisdiction to issue whatever order to enforce compliance is proper in the circumstances of each particular case.* [Emphasis added.] S. Rep. No. 931, 77th Cong., 2d sess., p. 10.

"The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case" (*Hecht Co.* v. *Bowles*, 321 U. S. 321, 329). It is clear that Congress intended to invoke that jurisdiction broadly and thus to make available the full range of the courts' equitable powers in enforcement proceedings. "In fact there is no limit to the various forms and kinds of specific remedy which [the Chancellor] may grant, adapted to novel conditions of right and obligation, which are constantly arising from the movements of society" 1 Pomeroy, *Equity Jurisprudence* (5th ed.) § 60. Compare *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 194.

This Court in *Hecht Co.* v. *Bowles*, 321 U. S. 321, construed the words "other order" in Section 205 (a) to authorize an order different from an injunction or restraining order. A decree such as the court below refused to issue comes, we submit, within the authority thus recognized, and such an order should issue in an appropriate case because of the responsibility which the court shares with the Administrator to carry on the war against inflation (321 U. S. 331) and to exercise its "discretion under § 205 (a) * * * in light of the large objectives of the Act" (*ibid.*). Such orders are necessary to undo the inflationary effects of violations, by preventing the economic pressures which the unlawful exactions otherwise set

up. The comprehensive scheme for controlling inflation, eliminating profiteering, and preventing price spirals would be incomplete if this remedy were withheld.[2]

The effect of the decision below is to make unavailable a traditional equitable remedy, restoration of the status quo, in the enforcement of the Emergency Price Control Act. If permitted to stand, the decision may, moreover, affect the vitality of similar enforcement powers under other Federal statutes of public importance.[3] The decision below is in direct conflict with *Bowles*

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[2] S. Rep. No. 931, 77th Cong., 2d sess., at p. 2, points out that:

"Rising prices and increases in the cost of living bring misery to our people, cause industrial unrest, and undermine our unity. Since prices do not advance at the same rate for all commodities, and living costs tend to rise more quickly than wages, the burdens of war are haphazardly distributed, with the heaviest burden on the farmer, the salaried worker, the small investor, the pensioner, and the veteran, whose incomes cannot readily be expanded. Rising living costs mean labor disputes and spiraling wage demands. And the suspicion of profiteering causes discontent which hampers production as surely as the bombing of factories."

To cope with the problems thus summarized, the Emergency Price Control Act was enacted "* * * to eliminate and prevent profiteering * * * to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living * * *" (§ 1).

[3] For example, the Fair Labor Standards Act, 52 Stat. 1069, 29 U. S. C. 217; the Sherman Act, 26 Stat. 1167, 15 U. S. C. 4; the Securities Act of 1933, 48 Stat. 86, 15 U. S. C. 77t (b); the

v. *Skaggs*, 151 F. 2d 817, in which the Circuit Court of Appeals for the Sixth Circuit held that under Section 205 (a) the court may at the suit of the Administrator order restitution. It is also inconsistent with *Walling* v. *O'Grady*, 146 F. 2d 422, in which the Circuit Court of Appeals for the Second Circuit held that a court may at the suit of the Wage and Hour Administrator grant similar relief under the Fair Labor Standards Act, which is less specific than Section 205 (a), simply authorizing the Federal district courts to restrain violations (52 Stat. 1060, 1069, 29 U. S. C. 217). The decision below also appears to run contrary to the salutary principle that a court of equity under a statute enacted to protect an important public interest need not limit its decree to prohibitions, but is "bound to frame its decree so as to suppress the unlawful practices and to take such reasonable measures as would preclude their revival." *Ethyl Gasoline Corporation* v. *United States*, 309 U. S. 436, 461. The test is the effectuation of the statutory policy. *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 189; *United States* v. *Bausch & Lomb Optical Co.*, 321 U. S. 707, 726; *Walling* v. *Miller*, 138 F. 2d 629, 633, concurring opinion of

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Securities Exchange Act of 1934, 45 Stat. 899, 15 U. S. C. 78u (e); the Federal Power Act, 49 Stat. 861, 16 U. S. C. 825m; the Public Utility Holding Company Act, 49 Stat. 831, 15 U. S. C. 79r (f); the Natural Gas Act, 52 Stat. 833, 15 U. S. C. 717u.

Woodrough, J. (C. C. A. 8), certiorari denied, 321 U. S. 784; *Fleming* v. *Alderman*, 51 F. Supp. 800 (D. Conn.). Compare *Virginia Electric & P. Co.* v. *National Labor Relations Board*, 319 U. S. 533, 541.

The power of an equity court to require affirmative action by an order designed to restore the status quo has long been established. *Texas & N. O. R. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Texas & N. O. R. R. Co.* v. *Northside Ry. Co.*, 276 U. S. 475, 479; *Jones* v. *Securities & Exchange Commission*, 298 U. S. 1, 15–18. The Court has the power, for example, to require a building to be set back to conform to an ordinance (*Welton* v. *40 E. Oak St. Bldg. Corp.*, 70 F. 2d 377 (C. C. A. 7), certiorari denied, 293 U. S. 590), to require one to send out letters corrective of letters previously sent out containing false statements (*Vaughan* v. *John C. Winston Co.*, 83 F. 2d 370 (C. C. A. 10)), to require contracts to be cancelled and access given to books and records (*United States* v. *Bausch & Lomb Optical Co.*, 321 U. S. 707), to require the dissolution of a combination (*United States* v. *Union Pacific R. R.*, 226 U. S. 61), to require stock held by a holding company to be distributed to its stockholders (*Standard Oil of New Jersey* v. *United States*, 221 U. S. 1, 77–82), to prescribe the disposition of patents and leased property unlawfully acquired (*Hartford-Empire Co.* v. *United States*, 323 U. S.

386), and, under Sec. 205 (a) of the Emergency Price Control Act, where a tenant has been wrongfully evicted, to require the landlord to restore the status quo by offering the premises to the tenant (*Henderson* v. *Fleckinger*, 136 F. 2d 381 (C. C. A. 5). Pecuniary relief is authorized in the exercise of the court's equity power as an incident of the power to give complete relief. High, *Injunctions* (4th ed.) § 669; 1 Pomeroy, *Equity Jurisprudence*, §§ 231, 237; *The Salton Sea Cases*, 172 Fed. 792 (C. C. A. 9), certiorari denied, 215 U. S. 603; *Kinney-Coastal Oil Co.* v. *Kieffer*, 277 U. S. 488, 507. Compare *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 197; *Agwilines* v. *National Labor Relations Board*, 87 F. 2d 146, 150–151 (C. C. A. 5).

It is true that in some of the cases the asserted power to restore the status quo was discussed or exercised because of contempt of the court's previous decree (*Texas & N. O. R. R. Co.* v. *Brotherhood of Railway Clerks, supra*) or on the ground that since the filing of the bill in equity the defendant had engaged in the acts sought to be enjoined (*Texas & N. O. R. R. Co.* v. *Northside Ry. Co., supra*; *Jones* v. *Securities & Exchange Commission, supra*; *Henderson* v. *Fleckinger, supra*.). But, granted the power of equity to afford this complete relief, it is brought into play as well by a violation of a positive

statutory command or equivalent administrative order, such as occurred in the *O'Grady, 40 E. Oak St.*, and *Winston* cases, *supra*.

These remedial powers may be exercised with particular appropriateness where the public interest is involved; for "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515, 552. The appropriateness of awarding pecuniary relief in a situation analogous to the present one has been aptly summarized in *Walling* v. *O'Grady, supra*, where the court said at p. 423:

> It is probable that the employee could have brought an individual action for loss of wages but such an action would not furnish a remedy adequate for such cases. The amount involved ordinarily would be small and the expense of recovery disproportionate and it seems more in accord with the spirit of sound labor legislation to allow the Administrator to restore all the rights of an employee in a single action instead of requiring one action for an injunction and reinstatement by the Administrator and another by the employee for loss of ad interim wages. We can see little difference between giving reparation to an employee for loss of wages as anciliary to injunctive

relief against withholding employment and giving back pay where an injunction for reinstatement has been violated as the court did in *Texas & N. O. R. Co.* v. *Brotherhood of Ry. Clerks*, 281 U. S. 548, 50 S. Ct. 427, 74 L. Ed. 1034. Cf. *Phelps Dodge Corporation* v. *National Labor Relations Board*, 313 U. S. 177, 188, 61 S. Ct. 845, 85 L. Ed. 1271, 133 A. L. R. 1217. In each case such reparation is necessary to restore the status quo interfered with by the unlawful conduct of the employer and in neither case is there a statutory mandate spelling out all the details of relief necessary for the purpose in hand. In *Texas & N. O. R. Co.* v. *Brotherhood of Ry. Clerks, supra*, back pay was allowed as an inherent power of a court of equity necessary in order to enforce an injunction. In the case at bar it would seem to be a necessary power adequately to carry out the prohibition of the Fair Labor Standards Act against a discriminatory discharge.

It results from the foregoing that a district court in the exercise of its traditional powers can order restitution in a case such as the present; that there is nothing in Section 205 (a) which reflects an intention on the part of Congress to restrict such powers; and that, on the contrary, it was the intent of Congress to afford full opportunity to a court of equity to treat enforcement proceedings under Section 205 (a) of the Act in such a

way as will be most responsive to the needs of the public in preventing inflation.

B. The Action for Statutory Damages Conferred Upon Purchasers and Tenants by Section 205 (e) of the Act Does Not Manifest a Congressional Intent To Restrict the Power of a Court of Equity To Order Restitution at the Suit of the Price Administrator Under Section 205 (a)

The right to compel restitution is wholly separate and distinct from the right granted to purchasers and tenants to recover damages under Section 205 (e). Proceedings under Section 205 (a) afford "a full opportunity for equity courts to treat enforcement proceedings under this emergency legislation in accordance with their traditional practices, as conditioned by the necessities of the public interest which Congress has sought to protect" *Hecht Co.* v. *Bowles*, 321 U. S. 321, 330. When the Administrator applies for an order of restitution to compel compliance, he seeks the vindication of public rights; not the redress of a private wrong. On the other hand, when an aggrieved purchaser or tenant seeks treble damages under Section 205 (e), he seeks the vindication of a private right bestowed upon him by the statute, not primarily the redress of a public wrong. "The Administrator acts in the public interest—the purchaser in his own. The remedies are not irreconcilable" *Bowles* v. *Skaggs*, 151 F. 2d 817, 821 (C. C. A. 6). In allowing treble damages to an aggrieved litigant, Congress was merely

adopting a familiar technique which appears in other regulatory statutes. "They [actions for treble damages] afford a remedy at law to persons damaged by having had to pay unlawfully high prices." (S. Rep. No. 931, 77th Cong., 2d Sess. (1942), p. 9.) "It was written into the statute because the Congress recognized the practical need of this aid to enforcement." (S. Rep. No. 922, 78th Cong., 2d Sess. (1944), p. 14.)

The distinction between remedies created by statute for the vindication of public rights at the suit of a public officer or agency and those provided for the redress of private wrongs at the suit of injured parties is a fundamental one. The agency created by statute to represent the public interest is entitled to invoke the full powers vested in the courts in order to achieve the purposes of the statute with the enforcement of which it has been entrusted. That the Act also accords remedies to private individuals is immaterial. A private individual asserts primarily a private right. The agency on the other hand represents the public interest directly, and that public interest is promoted by the issuance of affirmative orders enforcing compliance by compelling the undoing of past violations as well as by the prevention of future violations. *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 319 U. S. 533, 543; *National*

Labor Relations Board v. *Jones and Laughlin Steel Corporation*, 301 U. S. 1, 48; *Walling* v. *O'Grady*, 146 F. 2d 422 (C. C. A. 2); *Walling* v. *Miller*, 138 F. 2d 629, 633, concurring opinion by Woodrough, J. (C. C. A. 8), certiorari denied, 321 U. S. 784; *Office of Price Administration* v. *Georgian Hotel Co.*, 60 F. Supp. 155 (D. Mass.).

There is nothing in the legislative history of Section 205 (e) to indicate that Congress intended to restrict courts of equity in the exercise of their traditional powers and such restriction should not be "lightly implied". *Hecht Co.* v. *Bowles*, 321 U. S. 321, 330. Indeed, the legislative history of Section 205 (e) establishes that Congress intended to provide an action at law for aggrieved purchasers and tenants to lighten the burden of enforcement.[4] To deprive the Administrator of the opportunity of enforcing compliance by restoration of the status quo is to increase the burden of enforcement, not to lighten it. Purchasers and tenants often are unwilling either to assume the cost and risk of litigation, or to incur the hostility of a seller or landlord, as the case may be, upon whom they are dependent for the further supply of goods or for the peaceful enjoyment of premises.[5] The result is

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[4] S. Rep. No. 922, 78th Cong., 2d sess., p. 14; S. Rep. No. 931, 77th Cong., 2d sess., pp. 9–10.

[5] The hostility of the landlord in this case was amply demonstrated (R. 22–24, 30, 39).

that the remedy granted them may be found wanting to protect the public interest in a large class of cases in which strict enforcement is most gravely needed. The order for restitution may be the only practical sanction available to the Administrator. *Bowles* v. *Skaggs*, 151 F. 2d 817 (C. C. A. 6).

Nor does the fact that Section 205 (e) was amended by the Stabilization Extension Act of 1944, so as to permit the Administrator to sue to recover damages for overcharges in cases where the tenant or purchaser fails to sue within 30 days, either indicate that the remedy of compelling restitution did not previously exist or operate to withdraw that remedy. Nothing in the amendment to Section 205 (e) or its legislative history justifies the assumption that Congress intended to restrict the powers of courts under Section 205 (a). Moreover, as the court pointed out in *Bowles* v. *Skaggs*, 151 F. 2d 817 (C. C. A. 6), an order of restitution is not a judgment for damages or for penalties. The recovery which the Administrator may obtain under Section 205 (e) if a purchaser or tenant fails to sue is a judgment for statutory damages. Such a recovery is distinct from an order of restitution to the overcharged tenant, which compels compliance by restoration of the status quo and falls within the recognized power of a court of equity.

Nothing but the clearest Congressional expression would justify the view that a court of equity could no longer deal fully and effectively with a violator, enjoin future violations, and order refunds of overcharges to purchasers and tenants.

The rule relied on heavily by the court below "that where a statute creates a right and provides a special remedy, that remedy is exclusive," and the cases cited by the court in support of the rule, are not apposite. *United States* v. *Babcock*, 250 U. S. 328, involving the exclusiveness of a statutory administrative remedy, is not applicable here, nor is *Hassel* v. *United States*, 34 F. 2d 34, 36 (C. C. A. 3), in which the Government did not invoke the general equity powers of the court. In *Decorative Stone Co.* v. *Building Trades Council*, 23 F. 2d 426 (C. C. A. 2), certiorari denied, 277 U. S. 594, the company sought an injunction under the Clayton Act (38 Stat. 737, 15 U. S. C. 26) and triple damages in the same suit. The court held that since the damages were penal and were separately recoverable under Section 15 of the Act, they could not be recovered in an equity suit, and that a non-statutory recovery of damages could not be had. In that case, however, an injured person was seeking private redress. Since the statute provided two separate remedies for the injured individual, the court properly held these remedies to be exclusive. In the instant

case the overcharged tenants for whom restitution is sought are not seeking treble damages under Section 205 (e); the Administrator in order to enforce compliance is asking to have the unlawful overcharges restored for public reasons, as well as for injunctive relief against future wrongs. *Globe Newspaper Co.* v. *Walker*, 210 U. S. 356, relied on by the court, held only that the remedies of forfeiture and penalty and of injunction, given by statute to the owner of a copyrighted map, precluded resort to an action at law to recover the damages sustained by reason of an infringement.

The statement by the court below that it could not "enlarge the statutory scheme of enforcement", assumes erroneously that the powers vested in courts of equity under Section 205 (a) do not include the power to restore the status quo. The breadth of the equitable remedy made available by the statute here has, we believe, been amply demonstrated. Nothing in the cases cited by the court supports the view that a court of equity under Section 205 (a), in enforcing a statute of great public purpose, is shorn of its power to order restitution because aggrieved persons are provided in the same Act with the means of recovering statutory damages.

CONCLUSION

We respectfully submit that the judgment should be reversed and the cause remanded for further proceedings.

J. HOWARD MCGRATH,
Solicitor General.

RALPH F. FUCHS,
Department of Justice.

GEORGE MONCHARSH,
Deputy Administrator for Enforcement,

MILTON KLEIN,
Director, Litigation Division,

DAVID LONDON,
Chief, Appellate Branch,

SAMUEL ROSENWEIN,
Attorney,
Office of Price Administration.

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In the
Supreme Court of the United States

OCTOBER TERM, 1947

No. 503

CHESTER BOWLES, Administrator, Office of Price Administration,

Petitioner,

vs.

WARNER HOLDING COMPANY, a Corporation,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR WARNER HOLDING COMPANY, A CORPORATION, IN OPPOSITION

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In the
Supreme Court of the United States

OCTOBER TERM, 1945

No. 793

CHESTER BOWLES, Administrator, Office of Price Administration, Petitioner,

vs.

WARNER HOLDING COMPANY, a Corporation.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR WARNER HOLDING COMPANY, A CORPORATION, IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 25-36) is reported in 60 Fed. Supp. 513. The opinion of the Circuit Court of Appeals for the Eighth Circuit (R. 66-71) is reported in 151 Fed. (2d) 529.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 31, 1945 (R. 71-72). The jurisdiction of this Court is invoked under Sec. 240 (a) of the Judicial Code as amended by the Act of February 25, 1925.

QUESTION PRESENTED

Whether or not the words "other order" contained in Sec. 205 (a) of the Emergency Price Control Act includes the power of the Court to order restitution to be made by a landlord to tenants of overcharges in injunction proceedings brought under that Section of the Act.

STATUTE INVOLVED

The statute involved is the Emergency Price Control Act of 1942 (56 Stat. 23, 33, 50 U. S. C. App. 901, *et seq.*, as amended by the Stabilization Extension Act of 1944, 58 Stat. 640, 50 U. S. C. App. 901, *et seq.*)

The pertinent provisions of the statute involved are set forth in the Appendix hereto attached at the end of this Brief.

This action was brought by the Office of Price Administration, through its Administrator, Chester Bowles, to enjoin Warner Holding Company, a corporation, from violations of the Emergency Price Control Act and to require Warner Holding Company to refund to tenants the excess of the rents which it had collected over the maximum under the Act (R. 2-6).

The District Court granted the injunction but refused to order restitution, upon the grounds that the words "or other order" did not betray an intent to include therein the power of the District Court to order restitution in connection with injunction proceedings (R. 35-41).

The judgment of the lower court was affirmed by the Circuit Court of Appeals for the Eighth Circuit, upon the grounds that the remedy afforded the Administration by Sec. 205 (a) to enforce compliance by procuring injunctive orders or their equivalents constituted an adequate civil remedy to effectuate the purposes of the Act. Upon the further grounds that at the time this legislation was enacted

it was not the intent of Congress to include the power to order restitution as an adjunct of injunctive relief under the provisions of Sec. 205 (a). Upon the further grounds that Sec. 205 (a) provided a specific and exclusive statutory remedy for enforcing compliance with the Act, as manifested by the intent of Congress in the enactment of Sec. 205 (e), whereby the right of the Administrator to secure reparations was enlarged (R. 70, 71).

The decisions of both the District Court and Circuit Court of Appeals were, therefore, not rested solely upon the ground that the Court was without power to order restitution, but upon these additional grounds as well.

ARGUMENT

1. The decision of the Court below is not in conflict with the decision in *Bowles v. Skaggs*, 151 Fed. (2d) 817, merely because the Court in that case said it was in conflict. It will be observed that in the Court's opinion in connection with the denial of re-hearing of the *Skaggs* case, December 10, 1945, as set forth in the Appendix of Petitioner's Brief, the Court made a distinction between the facts there involved and the case at bar. It was that "the violations there involved were such as could be repeated and an injunction to prevent repetition might well have been considered adequate to vindicate the mandate of the statute and the regulation." This principle falls squarely within the principle as illustrated by the words of the Supreme Court in *Hecht Company v. Bowles*, 321 U. S. 321, wherein the Court there referred to the case of *Meredith v. City of Winterhaven*, 320 U. S. 228, and said:

> "An appeal to the equity jurisdiction conferred on Federal District Courts is an appeal to the sound discretion which guides the determinations of courts of equity."

The meaning of the words "or other order" was carefully considered by the Supreme Court in *Hecht Company v. Bowles, supra,* wherein the Court said:

> "Such an order, moreover, would seem to be a type of 'other order' which a successful reading of Section 205 (a) would permit a court to issue in a compliance proceeding."

It must be remembered that this is a compliance proceeding and not an action brought under the provisions of Sec. 205 (e) which makes provision for restitution or other statutory penalty to be imposed upon the defendant.

2. The argument advanced by petitioner that Sec. 205 (a) was amply broad enough to authorize the Court to compel restitution at the suit of the Administrator without the enactment of Sec. 205 (e) is without merit. If petitioner's argument could be deemed to be correct, there would have been no need for the enactment of Sec. 205 (e). The legislative history of the enactment of the Act clearly indicates that Congress knew Sec. 205 (a) was not adequate to provide for the remedy desired and that Sec. 205 (e) was enacted to remedy that defect. (Senate Report 931, 77th Congress, Second Session, p. 25, etc.)

This fact is recognized by the Circuit Court of Appeals, and is a correct one.

At the time Congress included the words "or other order" in the Act, had it intended to mean that restitution can be made under Sec. 205 (a), it had only to say so and include words to that effect. The power of the Court to grant mandatory relief predicated upon the terminology expressed in the statute creating a right and providing a special remedy, must be predicated upon language specific and direct, and the remedy there provided must be exclusive. *Wilder Manufacturing Co. v. Corn Products Refining Co.*, 236 U. S. 165, 174-175; *Arnson v. Murphy*, 109 U. S. 238;

Barnet v. National Bank, 98 U. S. 555, 558; *Farmers' & Mechanics' National Bank v. Dearing*, 91 U. S. 29, 35; *United States v. Babcock*, 250 U. S. 328, 331. See also *Hassel v. United States*, 3 Cir., 34 Fed. (2d) 34, 36, and cases cited.

When Congress enacted the statute in question it must have had in mind not only the last above referred to rule of law, but also the rule that where the enumeration of the specific is followed by a general statement it limits the field of application of the general to the field covered by the specific. Congress must have had in mind that the powers granted to a court of equity should be those specifically enumerated, should be explicit and direct and not subject to more than one interpretation, and that the Court cannot enlarge upon the statutory scheme of enforcement. *Globe Newspaper Co. v. Walker*, 210 U. S. 356; *Hecht Co. v. Bowles*, *supra*; *Meredith v. City of Winterhaven*, *supra*.

3. The purposes of the Act can be and are amply effectuated by Sec. 205 (e), and, as the Supreme Court said in the *Hecht* case, *supra*:

> "The Administrator does not carry the sole burden of the war against inflation. The courts also have been entrusted with a share of the responsibility. And their discretion under Sec. 205 (a) must be exercised in the light of the legitimate objectives of the Act. For the standards of the public interest in the requirements of private litigation measure the propriety and need for injunctive relief in these cases."

The case at bar is one where the purpose of the action is to prevent future violations for the protection of the public interest as against the requirements of private litigation.

4. The question of requiring the restoration of *status quo* between the parties compels a recognition of the principle that the *status quo* cannot be restored unless all of the parties are before the Court. This question is jurisdictional

and affords the basis upon which *Walling v. O'Grady*, 146 Fed. (2d) 422, is easily distinguished from the case at bar. The same reasoning applies to other cases involving an interpretation of the Fair Labor Standards Act (52 Stat. 1069, 29 U. S. C. 217). The restoration of *status quo* can be ordered only as to parties to the action. Sec. 205 (e) of the Emergency Price Control Act. *Walling v. Miller*, 138 Fed. (2d) 629, reversing *Fleming v. Miller*, 47 Fed. Supp. 1004; *Bowles v. Slater*, Eastern Dist. of Mich., Civil No. 4319, Feb. 28, 1945; *Hecht Co. v. Bowles, supra.*

If the remedy given tenants and consumers by the Act under Sec. 205 (a) is inadequate to protect the public interest, then Congress should amend it, but the Court does not have the power to grant to itself a power not granted to it by Congress and not intended by Congress to be granted.

CONCLUSION

If the decision of the Court below is in conflict with the decisions of other Circuit Courts of Appeal, then those decisions are erroneous. The decision of the Circuit Court of Appeals in this case is a correct one, it is good law, and certiorari should therefore be denied.

Respectfully submitted,

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APPENDIX

Section 4 (a) provides:

> It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (2) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

Section 205 (a) provides:

> Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Section 205 (e) prior to amendment provides:

> If any person, selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court. * * * If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or prices and the buyer is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States.

Section 205 (e), as amended by the Stabilization Extension Act of 1944, Pub. Law No. 383, 50 U. S. C. App., Sec. 925 (e), provides:

> If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Ad-

ministrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 793

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, *Petitioner,*

vs.

WARNER HOLDING COMPANY, A CORPORATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Petition for Certiorari filed January 30, 1946.
Certiorari granted March 11, 1946.

BRIEF FOR WARNER HOLDING COMPANY, A CORPORATION, IN OPPOSITION

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IN THE

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vs.

WARNER HOLDING COMPANY, A CORPORATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Petition for Certiorari filed January 30, 1946.
Certiorari granted March 18, 1946.

BRIEF FOR WARNER HOLDING COMPANY, A CORPORATION, IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 25-36)[1] is reported in 60 Fed. Supp. 513. The opinion of the Circuit Court of Appeals (R. 66-71) is reported in 151 Fed. (2d) 529.

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[1]Page references are to the printed transcript of record. Emphasis is supplied unless otherwise indicated.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 31, 1945 (R. 71-72). The petition for writ of certiorari was filed in this Court January 30, 1946. Certiorari was granted March 11, 1946. The jurisdiction of this Court is purportedly invoked by petitioner under Sec. 240 (a) of the Judicial Code as amended by the act of February 13, 1925.

QUESTION PRESENTED

The only question presented by this appeal is whether or not the Court has the power to grant an order compelling restitution of overcharges to tenants at the suit of the Administrator as part of an injunction to restrain further violations of the Emergency Price Control Act of 1942 under Sec. 205 (a) thereof (R. 25, 31).

Petitioner concedes that if the Court has such power it is only by virtue of the words "or other order" contained in Sec. 205 (a) of said act (R. 26, 27).

STATUTE INVOLVED

The relevant provisions of the Emergency Price Control Act of 1942, as amended by the Stabilization Extension Act of 1944, are set forth in the appendix, infra, pages 39, 40, 41.

STATEMENT

Petitioner's statement of the case is fairly presented, except that respondent believes that the following should be added thereto. The District Court further found, as follows:

> "There is some evidence in this case that in a treble damage action defendant may have valid counter-claims against certain tenants for damage

to or theft of its property. The tenants are not parties to this proceeding. One might well pose the question: 'Could this court, without a jury, adjudicate the amount of restitution in each of the 20 rental units involved here, some of which have had several different tenants, without the tenants before it and without the defendant having an opportunity to interpose valid counter-claims as a defense?' "

The foregoing is then immediately followed by the following quotation from the record (R. 27):

> "My conclusion is that this court lacks the power to grant an order compelling restitution of overcharges to tenants at the suit of the Administrator. I therefore do not raise the question of the propriety of such an order *under the facts of this case.*"

There is, therefore, on this appeal no question of the Court's discretion, because the parties involved in such an order were not all parties litigant and under the jurisdiction of the Court. The Circuit Court of Appeals (R. 52-53) rested its decision on two essential grounds: First, that Sec. 205 (e) of the act provided adequate civil remedies to effectuate the purposes of the act; and, secondly, that Sec. 205 (a) provides a specific and exclusive statutory remedy for enforcing compliance with the act.

SUMMARY OF ARGUMENT

THE POWER GRANTED TO THE COURT BY CONGRESS UNDER SEC. 205 (a) OF THE EMERGENCY PRICE CONTROL ACT TO ISSUE AN INJUNCTION "OR OTHER ORDER" DOES NOT INCLUDE THE POWER TO ORDER RESTITUTION.

A. The plenary power of the Court to grant mandatory relief must be predicated upon language specific and direct.

B. Where a statute creates a right and prescribes a remedy, the statutory remedy is exclusive.

C. The legislative history of the act clearly discloses no intent on the part of Congress to make reparation or restitution orders available to the Administrator.

D. The legislative history of the act by the amendment to Sec. 205 (e) so as to enlarge the right of the Administrator to secure reparations clearly indicates that there was no intention to grant the power to seek and award reparations or restitutions under Sec. 205 (a).

1. The exercise of such a power would lead to absurd, illogical and unconscionable complications and situations not contemplated by the Congress, and obviously unjust, inequitable and not within the purview of the act.

E. The mandatory relief granted and or the restoration of the status quo in administrative proceedings in connection with other acts has been done either:

1. because the relief and power so granted is granted specifically and directly to the administrative body; or

2. because the violation itself requires mandatory relief; or

3. by consent decree.

F. The restoration of status quo must be predicated upon jurisdiction of the subject-matter and of the parties.

ARGUMENT

THE POWER GRANTED TO THE COURT BY CONGRESS UNDER SEC. 205 (a) OF THE EMERGENCY PRICE CONTROL ACT TO ISSUE AN INJUNCTION "OR OTHER ORDER" DOES NOT INCLUDE THE POWER TO ORDER RESTITUTION.

A. The plenary power of the Court to grant mandatory relief must be predicated upon language specific and direct.

If petitioner's interpretation of the words "or other Order" is correct, it can follow only by way of implication, rendering thereby the words "or other Order" susceptible of interpretation not included in the words themselves, not explicit and direct and subject to more than one interpretation. The resulting ambiguity defeats the power of the Court to grant mandatory relief predicated upon them.

The meaning of this language was considered in the case of *Hecht Company v. Bowles*, 321 U. S. 321. This Court in rendering its decision (and this appears to be the only case that has to date been considered by the Supreme Court wherein these words are interpreted) said:

> "Though the Administrator asks for an injunction some 'other Order' might be more appropriate, or at least so appear to the Court. Thus, in the present case, one Judge in the Court of Appeals felt that the District Court should not have dismissed the complaint but should have entered an Order retaining the case on the docket with the right of the Administrator, on notice, to renew his application for injunctive relief if violations recurred. It is indeed not difficult to imagine that in some situations that might be the fairest course to follow and one which would be as practically effective as the issuance of an injunction. Such an Order, moreover, would seem to be a type of 'other Order' which

a faithful reading of Sec. 205 (a) would permit a court to issue in a compliance proceeding."

To grant the relief requested, this Court would have to reverse itself.

The Supreme Court stated in *Meredith v. City of Winterhaven,* 320 U. S. 228, 235, 64 Sup. Ct. 7, 11, and cited and quoted from in the *Hecht* case, supra, as follows:

> "An appeal to the equity jurisdiction conferred on Federal District Courts is an appeal to the sound discretion which guides the determinations of courts of equity. * * * the qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims. * * * The Administrator does not carry the sole burden of the war against inflation. The courts also have been entrusted with a share of the responsibility. And their discretion under Sec. 205 (a) must be exercised in the light of the large objectives of the Act. *For the standards of the public interest not the requirements of private litigation measure the propriety and need for injunctive relief in these cases.*

When Congress enacted the statute in question it must have had in mind the fundamental rule that where the enumeration of the specific is followed by a general statement, it limits the field of application of the general to the field covered by the specific. The Court cannot enlarge upon the statutory scheme of enforcement where special and exclusive remedies are provided by the statute.

Globe Newspaper Company v. Walker, 210 U. S. 356.

Hecht Company v. Bowles, supra.

Meredith v. City of Winterhaven, supra.

Decorative Stone Company v. Building Trades Council, 23 Fed. (2d) 426.

B. Where a statute creates a right and prescribes a remedy, the statutory remedy is exclusive.

The general rule in this regard is stated in 50 Am. Jur., Statutes, Sec. 596, pp. 593-594, as follows:

> "It is an established principle, that if a statute creating a new right or cause of action where none existed before, also provides an adequate remedy for the enforcement of the right created, and the statutory remedy is not by its terms cumulative, the remedy thus prescribed is exclusive. In such case, such remedy must be pursued in the enforcement of the right to the exclusion of any other remedy."

Decorative Stone Company v. Building Trades Council, 23 Fed. (2d) 426 (2nd Circuit, 1928). Pursuant to Sec. 16 of the Clayton Act (38 Stat. 730, 737, 15 U. S. C. A., Sec. 26) appellant sued for injunctive relief and for treble damages. After trial the district judge granted the injunctive relief, but refused to hear appellant "for the assessment of actual damages as an ordinary incident to an equity case." Appellant offered in that event, to waive its claim for treble damages. This request was denied, as was also a request that a jury be impaneled to assess damages, and that damages so found be trebled. The appellant appealed from said decree in so far only as it denied the recovery of damages and a reasonable attorney's fee, as incident to the injunctive relief granted. The Court said:

> "The appellant's contentions are based upon the premise that a court of equity, having jurisdiction for the purpose of awarding an injunction, should retain the cause and afford complete relief in accordance with established equitable principles * * *."

Arguing only as to special damages—not treble, in order to bring this case directly within the case at bar, the Court said:

"But it is an equally well recognized principle that where, as here, a statute creates a right and prescribes a remedy, the statutory remedy is exclusive. *Globe Newspaper Co. v. Walker*, 210 U. S. 356, 28 S. Ct. 726, 52 L. Ed. 1096; *Pollard v. Bailey*, 20 Wall. 520, 527, 22 L. Ed. 376; *Yates v. Jones Nat. Bk.*, 206 U. S. 158, 179, 27 S. Ct. 638, 51 L. Ed. 1002. The citation of *Pollard v. Bailey* in the Fleitmann case (*Fleitmann v. Welsbach Co.*, 240 U. S. 27, 36 S. Ct. 233, 60 L. Ed. 505) indicates that this doctrine was then thought to be applicable to Section 7 of the Sherman Act. In *Paine Lumber Co. v. Neal*, supra (244 U. S. 459, 37 S. Ct. 718, 61 L. Ed. 1256) it was held that Section 4 of the Sherman Act (15 U. S. C. A., Sec. 4), in providing for an injunction at the suit of government officials, impliedly negatived the right of a private person to obtain injunctive relief. By parity of reasoning, we think the remedy which the Act gave for damages was also exclusive. See *Wilder Mfg. Co. v. Corn Products Co.*, 236 U. S. 165, 174, 35 S. Ct. 398, 59 L. Ed. 520, Ann. Cas. 1916 A. 115. We are of opinion, therefore, that the complainant's only right to damages was the statutory right, and that, for reasons already given, this right is not enforceable in the District Court as an incident to injunctive relief."

Wilder Mfg. Co. v. Corn Products Co., supra, at p. 174:

"Where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy, the punishment or the remedy can be only that which the statute prescribes. *Farmers & Mechanics Nat. Bk. v. Dearing*, 91 U. S. 29, 35; *Barnet v. Nat. Bk.*, 98 U. S. 555; *Oates v. Nat. Bk.*, 100 U. S. 239; *Stephens v. Monongahela Bk.*, 111 U. S. 197; *Tesin Coal Co. v. George*, 233 U. S. 354, 359."

Paine Lumber Co., et al., v. Neal, et al., supra. Opinion by Mr. Justice Holmes, at page 471, states that "the Act of October 15, 1941, C. 323, Sec. 16; 38 Stat. 730, 737 (the Clayton Act) establishes the right of private parties to

an injunction in proper cases" (the contrary was held in this case, for other reasons). Even the dissent held that the remedy prayed for must be confined to the relief granted by the act. The dissent, in arguing that the injunction asked for should be granted, predicated its argument upon the ground that the relief should not be limited to the government because the individual always had the right of action at common law and said:

> "The Act creates no new offense and gives no new cause of action."

In other words, had a new offense and or cause of action been given, the relief would be limited to that.

Globe Newspaper Co. v. Walker, 210 U. S. 356. This was an action for claimed violation of the copyright laws. The question was whether plaintiff below had a remedy for damages as well as for an injunction under the Copyright Act. The Court said:

> "As we shall have occasion to see, the American Copyright Act does give special remedies to the owner of a copyright of maps. *Inadequate it may be to fully* protect the property in the copyright, yet such as Congress has seen fit to give, and which it, *not the courts*, have power to enlarge by annulment of the statutes.
>
> "To the owner of a copyright on a map is given, under Sec. 4965, forfeiture of plates and sheets, and one-half of the penalty of $1 for every sheet found in the defendant's possession; under Sec. 4970, the right to proceed by injunction. It thus appears that Congress has prescribed the remedies it intends to give, this being true, 'however inadequate,' as Lord Kenyon said in *Beckford v. Hood*, supra (7 T. R. 620), 'no others can be resorted to.'"

In holding that these remedies must be adhered to exclusively, the Court cited the universal rule that:

> "The statute, under such circumstances, may be said to so far provide for the liability and to create

the remedy as to make it necessary to follow its provisions and to conform to the procedure provided for therein. See *Pollard v. Bailey*, 20 Wall. 520, 526; *Fourth Nat. Bk. of Francklyn*, 120 U. S. 747, 756; *Evans v. Nellis*, 187 U. S. 271."

If it is a fact, as the petitioner argues, that the granting of the requested relief herein is necessary to effectuate the purposes of the act because otherwise the act would be inadequate to fully protect the property rights involved, the answer is simple. Congress can further amend the act to give this additional power and authority, as it did when Sec. 205 (e) was amended by the Stabilization Extension Act of 1944 (infra). But as the Court points out in the *Globe Newspaper* case, supra, merely because the act is inadequate is no reason for the *courts* to enlarge by judicial legislation the specific authority granted. Apparently, as we shall see hereinafter, Congress did feel that the original act as it was first passed was not adequate to fully protect the property rights of the individuals. It was for this reason that Sec. 205 (e) was amended. Having amended Sec. 205 (e), as it did, apparently Congress feels that that is all that is necessary.

Hassel v. U. S., 34 Fed. (2d) 34. This was an action under the Prohibition Act (27 U. S. C. A., Sec. 34). The usual order for the abatement of a nuisance under the act was made. In addition, the Court went further and decreed the forfeiture of certain property. The Circuit Court pointed out that this suit in equity was brought under Sec. 22 of the act which provides for abatement, and not under Sec. 25, which provides for forfeiture of property. There was no prayer, the Court said, for the forfeiture and destruction of the property, although the bill contained the usual prayer for general relief.

The Court, in holding that no such remedy (as forfeiture) is provided for in Sec. 22 of this act, and that hence the action would not lie, said: "That the remedy in an action provided by a statute is that which it particularly prescribes, or, stated differently, where a statute defines a proceeding and prescribes a remedy, the statutory remedy is exclusive seems to be sustained by an unvarying line of judicial decisions running through both state and federal jurisdictions (cases cited). * * * No authority to the contrary has come to our attention."

Jones v. Securities and Exchange Commission, 298 U. S. 1. After a registration statement had been filed with the Securities and Exchange Commission by appellant, the Securities and Exchange Commission issued a stop order (the equivalent of an injunction) and registrant attempted to withdraw the statement before it could become effective under the act. Withdrawal was refused. Aside from the following language, the case is not in point.

> "The action of the Commission finds no support in right principle or in law. It is wholly unreasonable and arbitrary. It violates the cardinal precept upon which the constitutional safeguards of personal liberty ultimately rest—that this shall be a government of laws—because to the precise extent that the mere will of an official or an official body is permitted to take the place of allowable official discretion or to supplant the standing law as a rule of human conduct, the government ceases to be one of laws and becomes an autocracy. * * * The admonition of Mr. Justice Bradly in *Boyd v. U. S.*, 116 U. S. 616, 635, should never be forgotten: 'It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. * * * It is the duty of courts to be watchful for the constitutional rights

> of the citizen, and against any stealthy encroachments thereon. Their motto should be obsta principiis.' * * *
>
> "And if the various administrative bureaus and Commissions, necessarily called and being called into existence by the increasing complexities of our modern business and political affairs, are permitted gradually to extend their powers by encroachments —even petty encroachments—upon the fundamental rights, privileges and immunities of the people, we shall in the end, while avoiding the fatal consequences of a supreme autocracy, become submerged by a multitude of minor invasions of personal rights, less destructive but no less violative of constitutional guaranties."

U. S. v. Babcock, 250 U. S. 328. This case involved the question of the proper remedy for an army officer to pursue to recover for the loss of a horse, and whether the authority conferred by Congress upon the Court of Claims gave the necessary jurisdiction. In holding that Congress had expressly conferred upon the Treasury Department exclusive jurisdiction and to make its (the Treasury Department's) decision final, the Court said: "That where a statute creates a right and provides a special remedy, that remedy is exclusive" (cases cited).

C. The legislative history of the act clearly discloses no intent on the part of Congress to make reparation orders available to the Administrator.

It must be remembered that this is a compliance proceeding and not an action brought under the provisions of Sec. 205 (e), which provide for the imposition of statutory penalty by way of monetary compensation to be imposed upon the defendant.

Thus, the argument advanced by petitioner that Sec. 205 (a) was broad enough to authorize the Court to compel restitution at the suit of the Administrator without

the enactment of Sec. 205 (e) is without merit. If Congress had intended to grant, under Sec. 205 (a), the power to order restitution, it could have done so by the simple expedient of saying so.

We believe the intent of the Congress to be amply set forth in Senate Report No. 931 of the 77th Congress, Second Session. On page 8 thereof, under the heading "Enforcement" the following language is used:

> "To discourage initial violations, the Committee substitute provides for actions at law to recover $50 or three times the amount of the illegal overcharges. This will permit private purchasers who buy for personal use or consumption, rather than in the course of trade or business, to protect themselves against violations of the Act. The bill, in addition, authorizes the Administrator to issue or require licenses where he deems such action necessary to assure effective enforcement. *The bill also authorizes the Administrator to seek a court injunction against violations of the Act, and* provides for the punishment of the most flagrant violations by criminal prosecutions subject to the supervision and control of the Department of Justice."

After this full discussion of this provision providing for enforcement, on page 9 we find a subdivision of the previous hearing of "enforcement," labeled "(b) Actions to Recover Damages." The question of this type of action is fully discussed and the intention declared in the following words:

> "(b) Actions to Recover Damages.—Such actions have proved valuable in the enforcement of other regulatory statutes, such as the Fair Labor Standards Act, both to relieve the Government of a part of the burden of enforcement and to deter initial violations. They afford a remedy at law to persons damaged by having had to pay unlawfully high prices. An action of this sort may be brought by any person who buys for use or consumption

other than in the course of trade or business, to recover from the seller who violates a price regulation, or price schedule, damages in the sum of $50 or treble the amount of the unlawful overcharge. * * * The same remedy is made available to persons who pay excessive rentals for defense-area housing accommodations. * * *.

"All such actions may be brought in any Federal Court or State Court of competent jurisdiction, and must be instituted within 1 year after delivery is completed or rent is paid. The further provision that the Administrator may sue on behalf of the United States not only where the United States is the consumer but also if the buyer is not entitled to bring suit will apply to situations in which the buyer is barred for bad faith or for some other reason, or in which the buyer is a purchaser in the course of trade or business. * * *."

The next discussion of the general scheme of enforcement is set forth in subdivision "(c) Suits to Enjoin Violations," which is that portion of the enforcement proceedings pertaining to Sec. 205 (a) of the act. It will be observed that in each instance there is a complete segregation in the discussion of the various schemes and modes of enforcement. In the discussion of Sec. 205 (a) there is not the slightest reference of any kind indicating an intention on the part of the Congress or the drafters of the act to include reparations or restitutions as part of injunction proceedings. We quote from that section of the discussion and report as follows:

"(c) Suits to Enjoin Violations.—In common with substantially all regulatory statutes, the bill authorizes the official charged with the duty of administering the Act to apply to any appropriate court, State or Federal, for an order enjoining any person who has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of the bill. Such

courts are given jurisdiction to issue whatever order to enforce compliance is proper in the circumstances of each particular case."

The further intention of the Congress relative to Sec. 205 (a) may be found further on in the Senate Report No. 931, at page 25. There, under a heading entitled: "Injunctions and Compliance Orders," we find a further explanation of the purposes and the scope of Sec. 205 (a), in words and figures as follows:

> "Section 205 (a) authorizes the Administrator to enforce compliance with the provisions of Section 4 of the bill, whenever in his judgment, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of Section 4, by making application to the appropriate court for an order enjoining such acts or practices, *or for an order enforcing compliance with such provision.* Upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices, a temporary or permanent injunction, restraining order or other order is to be granted without bond."

The Court's attention is directed specifically to these words: "or for an order enforcing compliance with such provision." This indicates quite clearly that while the drafters of the act may not have known exactly the type of order that would be necessary to enforce compliance with the provision, nevertheless, there is no indication of an intention to order reparations.

D. The legislative history of the act by the amendment to Sec. 205 (e) so as to enlarge the right of the Administrator to secure reparations clearly indicates that there was no intention to grant the power to seek and award reparations or restitutions under Sec. 205 (a).

As a matter of fact, as we shall see, Sec. 205 (e) was amended by the Stabilization Extension Act of 1944,

58 Stat. 640, 50 U. S. C. A. 901, for the purpose of giving the Administrator the power to obtain reparations which he had not heretofore had. If this were not so, there would have been no need for the amendment. The full discussion of the entire matter and the problems to be solved, as well as the purpose of the amendment, are fully set forth below showing the intention of Congress and of the Administrator, in Senate Report No. 922, 78th Congress, Second Session (p. 13):

"Suits for Damages.

"Section 108 of the bill amends subsection (e) of Section 205 of the Emergency Price Control Act. This subsection *now* provides for bringing actions for damages against sellers of commodities or landlords on account of overcharges in violation of the applicable maximum price or rent. In the case of the sale of commodities for use or consumption other than in the course of trade or business, which is generally the ordinary sale at retail, *and in the case of rents, the action may be brought only by the person who buys the commodity or pays the rent.* In other cases, the buyer is not entitled to bring suit and suit may be brought by the Price Administrator on behalf of the United States. * * *

"*This* bill amends the present law with respect to the amount of damages which may be recovered in actions under this subsection. * * *

"Suggestions for the further relaxation of the provisions of this subsection have been made to the committee, particularly with respect to the elimination of the $50 minimum. The committee believes this minimum should be retained. This action is the people's remedy against inflation. It was written into the statute because the Congress recognized the practical need of this aid to enforcement. It will be effective *only* if consumers are given a sufficient incentive for taking action. * * *

"*The bill further amends this subsection so as to strengthen it by authorizing the Price Administra-*

tor to bring a suit for the damages on behalf of the United States in those situations where the present statute authorizes suits only by the consumer, if the consumer does not bring an action within 30 days after the violation. * * * *This procedure*, by providing a quick and effective remedy for violations which are of a minor character, *will close an important gap in the present system of enforcement sanctions.*"

We feel that the Circuit Court has very clearly stated what appears from the foregoing to be the obvious, by these words from its decision (R. 52):

"Evidently it was found that Sec. 205 (e), as originally enacted was ineffective, and it was therefore amended so that the Administrator might enforce the remedy provided by that section if the persons who were entitled to it failed to act promptly. The fact that Congress amended Sec. 205 (e) so as to enlarge the right of the Administrator to secure the reparations therein provided for, militates against his contention here that under Sec. 205 (a) he always had the right to seek, and the court the power to grant, reparation orders to effectuate the purpose of the Act."

1. The exercise of such a power would lead to absurd, illogical and unconscionable complications and situations not contemplated by the Congress, and obviously unjust, inequitable and not within the purview of the act.

The complications that could arise if the relief asked for were granted and an order of restitution were made can well be observed in the following situations: Let us suppose that the Court would order restitution and one or more of the tenants were dissatisfied with the order so made by the Court. The tenant, not being a party to the action, would have no right of appeal and could do nothing about the order of restitution whatsoever except to bring an action under the provisions of Sec. 205 (e)

for treble damages. To that the landlord would have to plead res judicata. The question would then arise whether or not the order of restitution made by the Court was or was not res judicata inasmuch as the tenant was not party to that action. If the proceedings should be held res judicata the tenant is deprived of a remedy specifically afforded him by the statute. If it should be held not to be res judicata, then why should the order of restitution be made?

Let us suppose further that the order of restitution would be made from which the defendant would appeal. Upon appeal that order might be reversed or amended or otherwise modified without the tenant at any time ever being a party to the proceeding. This would leave the landlord, after the appeal in his favor, in a position whereby he might be subject to a subsequent suit by the tenant upon a matter already ostensibly adjudicated in his favor yet having been burdened by the costs and labor of appeal. The appeal thereupon in effect would become a nullity and an idle gesture.

If the Court could make any order it wished under the petitioner's interpretation of "or other order," why would it not be possible for the Court to make an order requiring not only a refund but treble damages or $50 for each violation, even though the latter would be repugnant to Sec. 205 (e) as amended? By the same process of reasoning, why couldn't the Court make such an order imposing a penalty of $10,000 or any other amount, even though that also might be repugnant to other provisions of the act? The absurdities of such an interpretation are obvious.

E. The mandatory relief granted and or the restoration of the status quo in administrative proceedings in connection with other acts has been done, because the relief and power so granted is granted specifi-

cally and directly to the administrative body involved.

Petitioner becomes quite eloquent in his brief, in stating that the issuance of such an order is, "in light of the large objectives of the Act" and "to undo the inflationary effects of violations." Other similar phraseologies are employed and an analogy is made to other administrative acts. The claim is made that with regard to these acts an equity court has required affirmative action to restore the status quo. However, an analysis of the particular acts referred to by petitioner leads one to this inevitable conclusion: That where such relief has been granted by the Court it has been granted, (1) because the power to order the relief requested was specifically granted to the particular Administrator or enforcement body charged with the enforcement of the act. (2) That under the rule that where the findings and orders of the administrative body are supported by the evidence, the Court is bound to uphold the findings and order of the Administrator, Commissioner or other enforcement official. We shall consider each of these acts.

Fair Labor Standards Act, 52 Stat. 1069, 29 U. S. C., Sec. 217.

The power of the Court to award back pay in connection with an injunction flows not from the inherent power of a court of equity to restore the status quo, but from the direct, specifically worded provisions of the power granted the National Labor Relations Board to make such orders. And from the power of the Court to enforce the orders of the board where the findings and orders of the board are sustained by the evidence, according to the tests stated in *Interstate Commerce Commission v. Union Pac. R. R. Co.*, infra.

Sec. 10 (c) of the National Labor Relations Act (29 U. S. C. A., Sec. 160 (c)) empowers the board as part of its cease and desist orders "to take such affirmative action, including reinstatement of employes *with or without back pay,* as will effectuate the policies of this chapter."

The courts, therefore, in sustaining the findings and order of the board *must* grant the injunction and order the back pay asked for by the board. The power is thus granted specifically and the courts have so held. We shall discuss in connection with these various acts, the cases cited by petitioner.

The finality of administrative rulings and the power and authority of the courts in upholding them has been well defined and discussed in *Interstate Commerce Commission v. Union Pac. R. R. Co.,* 222 U. S. 541; 32 S. Ct. 108, 56 L. Ed. 308, wherein Mr. Justice Lamar said:

> "It has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of law, * * * (4) * * * in violation of the constitutional prohibition against taking property without due process of law; or (5) * * * without evidence to support it; or (6) * * * authority * * * exercised in * * * * an unreasonable manner * * *" (see cases cited).

Agwilines, Inc., v. National Labor Relations Board, 87 Fed. (2d) 146 (5th Circuit), 1936. A cease and desist order of the National Labor Relations Board required the company to cease and desist from bargaining collectively with a company controlled labor union, and in addition to pay back pay to employes wrongfully discharged for union activities. This was brought under

subsection (f), Sec. 10 of the act (29 U. S. C. A., Sec. 160 (f)).

Petitioner claimed that "its constitutional rights are violated * * * the claim, the statute in question gives to the injured employe upon his unfair discharge, a legal action for damages, an action triable at common law, and not otherwise, and that therefore an award for damages against it may not be made administratively, but only upon and pursuant to a jury trial." The Court said:

> "A short and simple answer to this contention is found in the fact that as between employer and employe the statute confers *no* right of action triable by a jury or otherwise. No provision in it authorizes an employe to make claim. The Act does not purport to confer, it does not confer, private rights. * * * (cases cited) * * * The procedure the statute outlines is not designed to award, the orders it authorizes do not award damages as such. *The proceeding is not, it cannot be made, a private one to enforce a private right.* It is a public procedure, looking only to public ends. * * * Ample precedent exists in the Federal Trade Commission Act (15 U. S. C. A., Sec. 41, et seq.) * * *. The statute fixes no tenure for employment, it gives no cause of action for discharge. * * * Ample precedent for this kind of statute exists in Workmen's Compensation Acts[2] * * * 'as between employe and employer, the Act abolishes all right of recovery in ordinary cases, and therefore leaves nothing to be tried by jury.' *Mountain Timber Co. v. Washington*, 243 U. S. 219, 37 S. Ct. 260, 264, 61 L. Ed. 685, Ann. Cas. 1917 D, 642; *N. Y. C. R. Co. v. White*, 243 U. S. 188, 37 S. Ct. 247, 61 L. Ed. 667, L. R. A. 1917 D, 1, Ann. Cas. 1917 D, 629; *Roiwlette v. Rothstein Dental Laboratories*, 64 App. D. C. 373, 63 Fed. (2d) 150."

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[2]Hence, Court considers basis for this type of holding in connection with other acts, to be the same.

Phelps Dodge Corp. v. N. L. R. B., 313 U. S. 177. In this case, where the National Labor Relations Board ordered back pay in connection with other relief, the Court aptly demonstrated respondent's contention here. That is, that the reason why such decrees are not analogous to the situation at bar, is because of the grant by Congress of that power, authority and jurisdiction, by language specific and direct, "The remedy of back pay, it must be remembered, is entrusted to the Board's discretion." The Court said further, "and in applying its authority over back pay orders, the Board has not used stereotyped formulas but has availed itself of the freedom given it by Congress to attain just results in diverse, complicated situations." No such freedom is granted the Office of Price Administration, or the Court, under Sec. 205 (a).

Texas & N. O. R. R. Co. v. Brotherhood of Ry. Clerks, 276 U. S. 475, cited by petitioner, has no bearing upon the case at bar at all.

Texas & N. O. R. R. Co. v. Northside Belt Ry. Co., 276 U. S. 475. Holds: Where a defendant, with notice of the filing of a bill for an injunction, proceeds to complete the acts sought to be enjoined, the Court may, by mandatory injunction, compel a restoration of the status quo. It is obviously not in point here.

Virginia Electric & Power Co. v. N. L. R. B., 319 U. S. 533. This is another case where "Section 10 (c) of the Act (29 U. S. C. A., Sec. 160), authorizes the Board to require persons found engaged or engaging in unfair labor practices 'to take such affirmative action, including reinstatement of employes *with or without back pay*, as will effectuate the policies of this Act.'"

This case is therefore directly in point with appellee's principle of the granting of mandatory relief specifically

provided for only where set out by language specific and direct.

The reasoning of the Court in *Walling v. O'Grady*, 146 Fed. (2d) 422, relied on by petitioner, is therefore erroneous. There the Court said: "In such case such reparation is necessary to restore the status quo interfered with by the unlawful conduct of the employer and in neither case is there a statutory mandate spelling out all the details of relief necessary for the purpose in hand." That this is clearly not so may be seen from the following statement by this Court.

N. L. R. B. v. Jones & Laughlin Steel Corp., 381 U. S. 1. In this case, payment of back wages was ordered by the Court as an incident to injunctive relief. The jurisdiction and authority of the Court was challenged. "Respondent complains that the Board not only ordered reinstatement but directed the payment of wages for the time lost by the discharge, less amounts earned by the employe during that period."

The analogy of that case to the one at bar as asserted by petitioner, is non-existent, because in that case the authority and jurisdiction to order the defendant to pay back pay (make restitution) is granted by the act itself, in language specific and direct. The Court said: "This part of the order was also authorized by the Act. Sec. 10 (c)."

But in addition to the foregoing, the reasoning employed by the Circuit Court in the matter at bar further distinguishes this situation from that in *Walling v. O'Grady*, supra. The Circuit Court stated (R. 53):

> "However, Section 17 of the Fair Labor Standards Act * * * authorizes the Federal District Courts broadly, 'to restrain violations.' The statutory remedy may thus be regarded as general and cumulative, rather than specific and exclusive. It is to

> be noted that in *Walling v. O'Grady,* supra, p. 423 of 146 Fed. (2d), the Court was careful to distinguish the case from that of *Decorative Stone Company v. Building Trades Council* (supra), in which it was held that the statutory remedies prescribed by the Clayton Act were exclusive."

A further distinguishing feature is indicated by the memorandum of the lower court (R. 26) which analyzes *Walling v. O'Grady,* supra, which reversed *Walling v. Miller,* 138 Fed. (2d) 629, in support of petitioner's contention that that case held that the Court has the power to order restitution to employes in actions brought under the Fair Labor Standards Act. That memorandum states in substance that had that case so held, it might be another matter. However, such was not the holding of the Court. This case was an appeal from the District Court of the United States, Fourth District of Minnesota. The Administrator of the Wage and Hour Division of the Department of Labor had filed a complaint demanding judgment enjoining and restraining the defendants from violating the provisions of the Fair Labor Standards Act. On the same day the petition was filed a stipulation of the parties was filed *and a consent decree was entered.* In the stipulation the defendants waived answer and any defenses to the complaint and consented to the entry of a final judgment *including the payment of sums of money by way of restitution* to certain employes which would have been paid to them had they been compensated for their employment during the period in question, as required by the provisions of the Fair Labor Standards Act. The decree entered with the express consent of all the defendants granted the relief demanded and made the stipulation a part thereof and required the defendants to make the restitution included therein.

Subsequently the defendants filed a motion to vacate the decree, on several grounds. One was that the Fair Labor Standards Act does not authorize the plaintiff to maintain a suit for restitution of wages that may be due by virtue of any violation of Sec. 15, but that such power is granted solely to employes by Sec. 16. That therefore the Court was without jurisdiction in an injunction suit brought by the plaintiff to order restitution of wages, even though consented to by defendants.

After a hearing, the Court found that it had jurisdiction over the general subject-matter of the action and over the parties but that "because Sec. 16 (b) of the Fair Labor Standards Act gives to the employes a right to recover their wages and because Sec. 17 does not expressly permit the recovery of wages in an action brought under Sec. 17 any incidental powers which the Court might have under that section are withdrawn, for when a statute creates a right (or liability) and gives the specific remedy for its enforcement, that remedy is the exclusive one. Therefore, the Court lacked jurisdiction to grant restitution in this action."

From the part of the ruling granting "a vacation of the decree's order to make restitution of the back wages to their employes" the Administrator appealed.

The Court in rendering its decision said:

> "If the Court entering the decree had jurisdiction both of the general subject-matter and of the parties, any objection to the merits is reviewable on appeal and is not open on a motion to vacate. *Swift Co. v. United States*, 276 U. S. 311, 48 Sup. Ct. 311. * * * *We think the defendants confuse the power of the Court to adjudicate a controversy under the Act with the capacity of the parties to maintain the action.* Assuming, but not deciding that the Administrator is not authorized in the first place to maintain a suit for restitution and that only the

employes may do so, the inclusion of the Order for restitution in the consent decree did not go to the jurisdiction or power of the Court but to the merits only. * * * By jurisdiction we mean power to entertain the suit, consider the merits and render a binding decision thereon; and by merits we mean the various elements which enter into or qualify the plaintiff's right to the relief sought. There may be jurisdiction and yet an absence of merits, as where the plaintiff seeks preventative relief against a threatened violation of law of which he has no right to complain, where because it will not injure him or because the right to invoke such relief is lodged exclusively in an agency charged with the duty of representing the public in the matter. Whether a plaintiff seeking such relief has the requisite standing is a question going to the merits and its determination is an exercise of jurisdiction. * * *."

It will be observed therefore that this was a consent decree which was entered into at a time when the lower court had jurisdiction of both the parties and the subject-matter and that this point was not challenged by the defendants on appeal. By virtue of the language of the Court, as quoted above, the power of the Court to order restitution was not involved; the real point being involved was the question going to the merits, i. e., the Administrator's capacity to act as a plaintiff in such an action. The holding of the Court, therefore, is solely that by entering into the consent decree the defendants had waived the right of the Administrator to attack the modifying order. With this in mind, the following quotation from the *Miller* case, supra, covers the entire point in the case. The Court said at page 632:

"The contention may be sound that the Administrator lacked authority to maintain an action for restitution because the statute having created a right (a liability) and having given a special remedy for its enforcement, that remedy is exclusive; but, if

such contention be correct, it shows *only* that the Court erred in rendering the decree and in finding at that time that the remedy given the employes is not exclusive. The error pertained *only to the capacity of the plaintiff and to the remedy, not to the power of the Court.* Whether the Administrator 'has the requisite standing' to maintain a suit for restitution 'is a question going to the merits,' and the decree is not subject to attack for such an error by motion to vacate. *General Investment Company v. New York Central Railroad*, 271 U. S. 228, 46 Sup. Ct. 496. The right of the Administrator to make such an attack was waived by the defendants. *The inherent power of the Court to enter the order appealed from is not involved.* It was error to sustain the motion." (Italics ours.)

Federal Alcohol Administration Act, 49 Stat. 985, 27 U. S. C. A., Sec. 207.

The power of the Court to couple with a fine (comparable to restitution) an injunction under this act (27 U. S. C. A., Sec. 207) is also granted specifically in language direct and specific. This section reads in part:

"Any person violating any of the provisions of Section 203 or Section 205 of this title shall be guilty of a misdemeanor and upon conviction thereof be fined not more than $1,000.00 for each offense. The Secretary of the Treasury is authorized, with respect to any violation of this chapter, to compromise the liability arising with respect to such violation (1) upon payment of a sum not in excess of $500 for each offense, to be collected by the Secretary and to be paid into the Treasury as miscellaneous receipts, and (2) in case of repetitious violations and in order to avoid multiplicity of criminal proceedings, upon agreement to a stipulation that the United States may, on its own motion upon five days' notice to the violator, cause a consent decree to be entered by any court of competent jurisdiction enjoining the repetition of such violation."

Under this act, as also the Fair Labor Standards and National Labor Relations Acts, the power in the Court implies the power to make effective this (and these) act (or acts) and to carry out and give effect to and enforce the orders of administrative officers legally made thereunder. *Strauss v. Berkshire* (C. C. A., 1943), 132 Fed. (2d) 530.

Federal Food, Drug and Cosmetic Act, 52 Stat. 1043, 21 U. S. C., Sec. 332.

For the same reasons condemnation and or fine and injunction may both lie against a defendant for violation of this act where prayer for condemnation and prayer for injunction grew out of the same transaction and basic issues were identical. *U. S. v. 184 Barrels Dried Whole Eggs,* 53 Fed. Supp. 652. The reason is obvious. Section 332 (a) in words specific and direct gives the District Courts of the U. S. jurisdiction to restrain violations of Section 331. Subdivision (b) provides for the method of trial in violation of injunction cases. Section 33 provides for penalties for violation of Section 331 by fine, imprisonment or both, Section 334 provides for seizure and condemnation of articles introduced into interstate commerce which violate the provisions of the act.

Federal Power Act, 49 Stat. 861, 16 U. S. C., Sec. 825 (m).

Exactly the same principles apply to violation of this act and the power of the courts to grant injunctive relief with other penalty or penalties.

Section 825 (m) provides for the granting of injunction where "any person is engaged or about to engage in any acts or practices which constitute or will consti-

tute a violation of the provisions of this chapter, or of any rule, regulation, *or order* therunder * * *."

Section 825 (n) provides for forfeiture and fines to be imposed for violation and says in addition: "The imposition or payment of any such forfeiture shall not bar or affect any penalty prescribed in this chapter but such forfeiture shall be *in addition* to any such penalty."

Hence, an order of the Commission including therein any or all of the foregoing would be reviewable by the Circuit Court of Appeals, and if the findings and orders were supported by the evidence, would become final. *Carolina Aluminum Co. v. Fed. Power Commission* (C. C. A., 1938), 97 Fed. (2d) 435.

4 Hot Oil Act, 49 Stat. 33, 15 U. S. C., Sec. 715.

Similar specific grants of power and authority are granted under this act, with a like result.

Section 715 (e) provides for fine, imprisonment, or both.

Section 715 (f) provides for forfeiture of contraband oil. It provides also that after such seizure and forfeiture "in any such case the Court may in its discretion, and under such terms and conditions as it shall prescribe, order the return of such contraband oil to the owner thereof where undue hardship would result from such forfeiture."

Section 715 i(a) grants specifically the power "to issue mandatory injunctions commanding any person to comply with the provisions of this chapter or any regulation issued thereunder."

Section 715 i(b) grants specifically to the District Court the power "to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond."

Small wonder, therefore, that upon proper findings by the board and order issued thereunder, sustained by the evidence, the Court would grant mandatory relief.

Natural Gas Act, 52 Stat. 833, 15 U. S. C., Sec. 717.

Section 717 S(a) of this act authorizes the commission to "bring an action in the proper District Court * * *, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, *or order thereunder*, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond."

Section 717 S(b) provides that "upon application of the Commission" the courts "shall have jurisdiction to issue writs of mandamus * * *."

Section 717 T(b) provides that violators "shall, in *addition* to any other penalties provided by law, be punished * * * by a fine. * * *."

Public Utility Holding Companies Act, 49 Stat., 831, 15 U. S. C., Sec. 79.

Section 79 r(f) of this act also grants the right of this commission to apply to the proper Court for violation of or prospective violation of "any rule, regulation, or order thereunder, * * * to enjoin such acts or practices * * * or order * * *, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond."

Section 79 r(g) provides that upon application of the commission, the courts "shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter * * * or order of the Commission thereunder."

As long, therefore, as the relief and findings are sus-

tained by the evidence of the commission and confined to the specific grants of power and authority conferred by the act, the orders of the commission or other administrative body will be enforced. But if exceeded, they will not be.

In *Securities and Exchange Commission v. Long Island Lighting Co.*, 148 Fed. (2d) 252 (C. C. A. 2, Feb. 23, 1945), there was an appeal by the commission from an order of the court below (D. C., E. D. N. Y.) denying its plea for an injunction to restrain an exempted public utility company from carrying out a plan of reorganization. The commission argued that since it had begun proceedings to revoke the exemption accorded the company under Section 3 (a) 1, the Court had power to preserve the status quo. The Court, however, affirmed the lower court decision, on the ground that the utility company had been exempted from the provisions of the act; hence, had disobeyed no order or regulation of the commission. The Court further held that *no provision had been made in the act for situations of this kind, and that it had no power to issue an injunction.*

Securities Act of 1933 and 1934, 48 Stat. 86, 15 U. S. C. 77; 45 Stat. 899, 15 U. S. C. 78.

The enforcement provisions of these acts are the same as those of the Public Utility Holding Companies Act.

These acts hereinbefore referred to and the cases quoted herein in connection therewith result in this conclusion: that in each instance there is a specific grant of authority to the particular Administrator or Commissioner, as the case may be, to encompass in an order, injunctive or mandatory relief. Upon a determination by the Court that the findings and order were sustained by the evidence, the Court was bound to grant a decree

consistent with the expressly delegated powers of the Administrator or commission, upon which the order was predicated. In view of the fact that there is no such expressly delegated power to the Administrator, in Sec. 205 (a), the situation is not at all analogous to decisions under the Fair Labor Standards Act and the other acts hereinbefore referred to.

2. The mandatory relief granted *and or* the restoration of the status quo in administrative proceedings in connection with other acts has been done because the violation itself requires mandatory relief.

It is upon this basis that mandatory relief restoring the status quo of the parties has been granted in proceedings under the Sherman Anti-Trust Act.

Sherman Anti-Trust Act, 36 Stat. 1167, 15 U. S. C., Sec. 4.

Sec. 3 of this act provides that "every contract, combination in form of trust or otherwise, * * * is declared illegal.

The right to injunctive relief and power to grant it is provided in Sec. 4.

Even though *acts* may be enjoined, the combination, etc., must be dissolved else there will be a continuing violation.

Standard Oil Co. v. U. S., 221 U. S. 1. While it is true that in this case the Court, in addition to enjoining future acts, required by order, affirmative acts to restore the status quo, by requiring stock held in trust to be distributed to stockholders, it did so with these two elements present: (1) "The condition which has been brought about in violation of the statute, in and of itself, is not only a continued attempt to monopolize but also

a monopolization * * *" (p. 77). That is to say, even though enjoined from certain acts in the future, there would be a continuation of the monopoly, if its *existence* were allowed to continue. (2) There being no other remedy granted as a means of "compelling obedience to the law" (p. 81). Or stating it another way, had the Sherman Act had some other *or additional* provision whereby an adequate remedy at law was specifically granted by the statute, there is no question but what a relief would have had to have been granted consistent with and limited to that provision. For the Court says at page 77: "As penalties which are not authorized by law may not be inflicted by judicial authority, it follows that to meet the situation with which we are confronted the application of remedies two-fold in character becomes essential."

Vaugh v. Winston, 83 Fed. (2d) 370. Here, an order requiring the defendant to publish retractions of a libel was attacked on the grounds the Court did not have the authority to require this affirmative act to be done. That this contention is obviously wrong we know. The point, in so far as it affects the case now before the Court, is amply answered by these words of the Court: "It is the only appropriate means of rectifying the wrong done."

In the case at bar such is not the fact. An adequate remedy is provided for in Sec. 205 (e).

U. S. v. Crescent Amusement Co., 323 U. S. 173. This case goes on the same principle of law as the *Standard Oil* case, supra, and that is: "Dissolution of the combination will be ordered where the creation of the combination is itself the violation." In other words, even though future violations are enjoined, the continuance of the existence of the monopoly, which itself is the violation, creates of itself a continuing violation. We have

no quarrel with that principle. It simply has no bearing on the case at bar.

U. S. v. Union Pac. Ry., 226 U. S. 61. This case is the same in principle and application to the above.

3. The mandatory relief granted and or the restoration of the status quo in administrative proceedings in connection with other acts has been done by consent decree.

This particular point is referred to in connection with *Walling v. Miller*, supra, which was in the first place a consent decree.

It is interesting to note that in the lower court the petitioner cited a number of unreported cases in support of its contentions at that time. Apparently, however, because it was pointed out then; that those were consent decrees, petitioner has now abandoned any reliance upon those decisions. It is significant to note, however, that in addition to the foregoing another ground or justification for granting mandatory relief is the inherent right of parties to consent to any kind or type of decree they desire. This further distinguishes the present situation from the case of *Fleming v. Alderman*, 51 Fed. Supp. 800, relied upon by petitioner in its brief.

Fleming v. Alderman, supra, was a civil action for contempt of Court. A *consent* decree had been agreed upon between the Administrator of the Wage and Hour Division under the Fair Labor Standards Act, 29 U. S. C., Secs. 206, 207, 216, 217. By its terms, the agreement required the restitution on a stipulation between the parties of certain amounts to employes and certain other injunctive relief. All was not paid as agreed upon. This action ensued. Respondents attempted to justify themselves on the ground the Court had no jurisdiction to enter such an order in the first place.

The decision answers petitioner's argument on this particular point. The Court said:

> "The respondent's motion must be denied. For this court had jurisdiction under Section 17 of the Act, 29 U. S. C. A., Sec. 217, to restrain violations of Sections 6 and 7. Under Section 16 of the Act, 29 U. S. C. A., Sec. 216, it has jurisdiction to punish violations of Sections 6 and 7 as criminal violations and to award damages resulting from violations of Sections 6 and 7 in civil actions brought by employes. Plainly the court had a broad jurisdiction over the general subject-matter of such violations. And its jurisdiction over the persons of the defendants was unquestioned; *they appeared and consented in writing to the decree. Swift & Co. v. U. S.*, 276 U. S. 311, 48 S. Ct. 311, 72 L. Ed. 587; *Fleming v. Warshawsky & Co.*, 123 Fed. (2d) 622.
>
> "And if the court had jurisdiction as just described, the respondents may not now be heard to complain of any supposed error in the order. This proposition also is sustained by the cases cited. See also, *S. E. C. v. Jones*, 2 Cir., 85 Fed. (2d) 17; *U. S. v. Swift & Co.*, 286 U. S. 106, 117, 52 S. Ct. 460, 76 L. Ed. 999; and *Howat v. Kansas*, 258 U. S. 181, 42 S. Ct. 277, 66 L. Ed. 550.
>
> "To a contrary effect is *Fleming v. Miller*, D. C., 47 Fed. Supp. 1004, 1008, upon which respondents largely rely. But that decision in my view rests upon a jurisdictional test too narrow. * * * And apparently it was thought that the court sitting in a statutory proceeding under the Act, was invested only with the jurisdiction expressly conferred by the Act and must view itself for purposes of the statutory proceeding as shorn of its general equitable jurisdiction. Throughout the decision is predicated upon some distinction between jurisdiction with respect to back wages and jurisdiction with respect to wages accruing in the future.
>
> "I find no basis for this distinction in the Act. Section 17 authorizes injunctions to restrain 'violations' of Section 15, into which Sections 6 and 7 are incorporated by *express reference*. It contains no

language which limits its effect to violations with respect to wages earned thereafter.

"Section 6 provides: 'Every employer shall pay.' etc. It can be violated *only* by failure to discharge the affirmative duty created by the Act. * * *

"Since the statutory obligation is to 'pay,' it is not discharged until payment is completed."[3]

F. The restoration of status quo must be predicated upon jurisdiction of the subject-matter and of the parties.

The trial court found that "there is some evidence in this case that in a treble damage action defendant may have valid counterclaim against certain tenants for damage to or theft of its property. The tenants are not parties to this proceeding" (R. 27).

The subject-matter in a restitution proceeding would be the respective amounts due between the landlord and tenants for overcharges on the one hand, and offset and counterclaim on the other hand. The parties involved would be the landlord and tenants. The lower court propounded a question which we believe to be of considerable significance. The Court said at page 28 of the record:

> "One might well pose the question: Could this court, without a jury, adjudicate the amount of restitution in each of the 20 rental units involved here, some of which have had several different tenants, without the tenants before it and without the defendants having an opportunity to interpose valid counterclaims as a defense."

We have been unable to find any case of any kind in any jurisdiction where mandatory relief was granted, where the subject-matter and the parties were not before the Court. In the following two cases cited it is noted

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[3]The vast difference between this act and Sec. 205 (a) of the act in the case at bar is obvious. Sec. 205 (a) has no wordage to the effect that it shall or shall not be the duty to pay, or words comparable thereto.

that in each instance the Court refers to the fact that the subject-matter and parties are subject to the jurisdiction of the Court and parties to the action.

U. S. v. Bausch & Lomb Optical Co., 321 U. S. 707. Here, in addition to an injunction enjoining the defendants from certain well defined violations of the Sherman Anti-Trust Act and the Fair Trade Practices Act, the Court granted to the Department of Justice, by order, certain rights of visitation, investigation and search of the books, records, etc., of the defendants.

The Court, in justifying this latter portion of the decree, did so on the ground that it was necessary in order to ascertain future violations without the necessity of further trials and if it "tends to dissipate the restraints and prevent evasions" (p. 726) of the injunction. However, it is noted, that the Court examines with care the fact that said order runs against a party *only*. In the footnote No. 6 at page 725, the Court said: "The wording of the sentence includes the papers of the individual defendants who are officers of the Soft-Lite. The United States disclaims in its brief, page 55, so broad a meaning. We accept the suggested interpretation that the paragraph relates only to the papers belonging to the corporation." If the decree affected in any way a person or subject-matter not a party to the action, in view of the following additional words, we doubt that the Court would have upheld the decree. At page 726 the Court said further: "The first sentence of the provision of the decree under discussion compels the disclosure only of papers relating to the matters contained in the judgment."

In the case at bar, if restitution were ordered, the appellee would have the right of offset and counterclaim,

thus bringing into issue matters *not* contained in the judgment.

The Salton Sea cases, 172 Fed. 792. All this case holds is that a Court of Equity which has acquired jurisdiction of a suit to enjoin a continuing trespass upon land, may also, to prevent a multiplicity of suits, award damages for the injury already done, although the same would also be recoverable by an action at law (see pp. 799 to 804, inclusive, and cases therein cited).

We find no quarrel with this long established principle of law. However, in all of the cases cited, and all the authorities quoted from on this point, there is not one in which damages were awarded either in favor of or against a person who was not a party to the action. Stated another way, all these cases presume the fact to be (and it is the fact) that the relief for injunction and damages is between the parties, and therein lies the distinction.

CONCLUSION

The decision of the Circuit Court is correct and well reasoned law. We respectfully submit that the decision of the lower court be affirmed.

Respectfully submitted,

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APPENDIX

Sec. 4 (a) provides:

> It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under Sec. 2, or of any price schedule effective in accordance with the provisions of Sec. 206, or of any regulation, order, or requirement under Sec. 202 (2) or Sec. 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

Sec. 205 (a) provides:

> Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of Sec. 4 of this act, he may make application to the appropriate Court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Sec. 205 (e) prior to amendment provides:

> If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by

the Court. * * * If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or prices and the buyer is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States.

Sec. 205 (e) as amended by the Stabilization Extension Act of 1944, Pub. Law No. 383, 50 U. S. C. App., Sec. 925 (e), provides:

If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the Court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the Court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the Court in its discretion may determine: Provided, however, that such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regula-

tion, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any Court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.

SUPREME COURT OF THE UNITED STATES.

No. 793. October Term, 1945.

Paul A. Porter, Administrator, Office of Price Administration, Petitioner, vs. Warner Holding Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[June 3, 1946.]

Mr. Justice Murphy delivered the opinion of the Court.

In this case we are concerned with the power of a federal court, in an enforcement proceeding under § 205(a) of the Emergency Price Control Act of 1942,[1] to order restitution of rents collected by a landlord in excess of the permissible maximums.

The Warner Holding Company, the respondent, owns eight apartment houses in Minneapolis, Minnesota, containing approximately 280 dwelling units. Between November 1, 1942, and June 29, 1943, it demanded and received rents in excess of those permitted by the applicable maximum rent regulations issued under the Act. The Administrator of the Office of Price Administration then brought this action in the District Court to restrain the respondent from continuing to exceed the rent ceilings. The complaint was later amended to seek, in addition, a decree requiring the respondent "to tender to such persons as are entitled thereto a refund of all amounts collected by defendant from tenants as rent for the use and occupancy of housing accommodations in excess of the maximum rents established by said Regulation, provided, however, that defendant shall not be required to make such tender to any person who has commenced an action against defendant under Section 205(e) of the Emergency Price Control Act of 1942 alleging the collection by defendant of rent in excess of the maximum rents established by said Regulation."

The District Court enjoined respondent from continuing to collect rents in excess of the legal maximums but declined to order restitution. 60 F. Supp. 513. The Eighth Circuit Court

[1] 56 Stat. 23, 33; 50 U. S. C. App. § 925(a).

of Appeals affirmed the judgment. 151 F. 2d 529. Both courts held that there was no jurisdiction under the statute to order restitution. We granted certiorari because the result was in conflict with that reached by the Sixth Circuit Court of Appeals in *Bowles* v. *Skaggs*, 151 F. 2d 817, and because of the obvious importance of the issue in the administration and enforcement of the Emergency Price Control Act.

This proceeding was instituted by the Administrator under § 205(a) of the Act, which provides: "Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

Thus the Administrator invoked the jurisdiction of the District Court to enjoin acts and practices made illegal by the Act and to enforce compliance with the Act. Such a jurisdiction is an equitable one. Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction. And since the public interest is involved in a proceeding of this nature, those equitable powers assume an even broader and more flexible character than when only a private controversy is at stake. *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515, 552. Power is thereby resident in the District Court, in exercising this jurisdiction, "to do equity and to mould each decree to the necessities of the particular case." *Hecht Co.* v. *Bowles*, 321 U. S. 321, 329. It may act so as to adjust and reconcile competing claims and so as to accord full justice to all the real parties in interest; if necessary, persons not originally connected with the litigation may be brought before the court so that their rights in the subject matter may be determined and enforced. In addition, the court may go beyond the matters immediately underlying its equitable jurisdiction and decide whatever other issues and give whatever other relief may be necessary under the cir-

cumstances. Only in that way can equity do complete rather than truncated justice. *Camp* v. *Boyd*, 229 U. S. 530, 551-552.

Moreover, the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. "The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction." *Brown* v. *Swann*, 10 Pet. 497, 503. See also *Hecht Co.* v. *Bowles*, *supra*, 330.

It is readily apparent from the foregoing that a decree compelling one to disgorge profits, rents or property acquired in violation of the Emergency Price Control Act may properly be entered by a District Court once its equity jurisdiction has been invoked under § 205 (a). Indeed, the language of § 205 (a) admits of no other conclusion. It expressly envisages applications by the Administrator for orders enjoining violations of the Act and for orders enforcing compliance with the Act; and it expressly authorizes the District Court, upon a proper showing, to grant "a permanent or temporary injunction, restraining order, or other order." As recognized in *Hecht Co.* v. *Bowles*, *supra*, 328, the term "other order" contemplates a remedy other than that of an injunction or restraining order, a remedy entered in the exercise of the District Court's equitable discretion. An order for the recovery and restitution of illegal rents may be considered a proper "other order" on either of two theories:

(1) It may be considered as an equitable adjunct to an injunction decree. Nothing is more clearly a part of the subject matter of a suit for an injunction than the recovery of that which has been illegally acquired and which has given rise to the necessity for injunctive relief. To be sure, such a recovery could not be obtained through an independent suit in equity if an adequate legal remedy were available.[2] *White* v. *Sparkill Realty Corp.*, 280 U. S. 500; *Lacassagne* v. *Chapuis*, 144 U. S. 119. But where, as here, the equitable jurisdiction of the court has properly been

[2] But if a defendant with notice of a pending injunction proceeding completes the acts sought to be enjoined, the court of equity may restore the status quo by means of a mandatory injunction. Texas & N. O. R. R. Co. v. Northside Ry. Co., 276 U. S. 475; Porter v. Lee, 328 U. S. —.

invoked for injunctive purposes, the court has the power to do all relevant matters in dispute and to award complete relief even though the decree includes that which might be conferred by court of law. *Alexander* v. *Hillman*, 296 U. S. 222, 241-242.

(2) It may be considered as an order appropriate and necessary to enforce compliance with the Act. Section 205(a) anticipates orders of that character, although it makes no attempt to catalogue the infinite forms and variations which such orders might take. The problem of formulating these orders has been left to the judicial process of adapting appropriate equitable remedies to specific situations. Cf. *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 194. In framing such remedies under § 205(a), courts must act primarily to effectuate the policy of the Emergency Price Control Act and to protect the public interest while giving necessary respect to the private interests involved. The inherent equitable jurisdiction which is thus called into play clearly authorizes a court, in its discretion, to decree restitution of excessive charges in order to give effect to the policy of Congress. *Clark* v. *Smith*, 13 Pet. 195, 203. And it is not unreasonable for a court to conclude that such a restitution order is appropriate and necessary to enforce compliance with the Act and to give effect to its purposes. Future compliance may be more definitely assured if one is compelled to restore one's illegal gains; and the statutory policy of preventing inflation is plainly advanced if prices or rents which have been collected in the past are reduced to their legal maximums.

The legislative background of § 205(a) confirms our conclusion that the traditional equity powers of a court remain unimpaired in a proceeding under that section so that an order of restitution may be made. The Senate Committee on Banking and Currency, in reporting upon the bill which became the Emergency Price Control Act, stated in regard to § 205(a): "In common with substantially all regulatory statutes, the bill authorizes the official charged with the duty of administering the act to apply to any appropriate court, State or Federal, for an order enjoining any person who has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of the bill. Such courts are given jurisdiction to issue whatever order to enforce compliance is

proper in the circumstances of each particular case." S. Rep. No. 931, 77th Cong., 2d Sess., p. 10.[3] The last sentence is an unmistakable acknowledgement that courts of equity are free to act under § 205(a) in such a way as to be most responsive to the statutory policy of preventing inflation.

It is true that § 205(e) authorizes an aggrieved purchaser or tenant to sue for damages on his own behalf; and if that person has not sued within the statutory period, or for any reason is not entitled to sue, the Administrator may institute an action for damages on behalf of the United States.[4] To the extent that damages might properly be awarded by a court of equity in the exercise of its jurisdiction under § 205(a), see *Porter* v. *Williams*, 8 How. 134, 160, § 205(e) supersedes that possibility and provides an exclusive remedy relative to damages. It establishes the sole means whereby individuals may assert their private right to damages and whereby the Administrator on behalf of the United States may seek damages in the nature of penalties.[5] Moreover, a court giving relief under § 205(e) acts as a court of law rather than as a court of equity. But with the exception of damages, § 205(e) in no way conflicts with the jurisdiction of equity courts under § 205(a) to issue whatever "other orders" may be necessary to vindicate the public interest, to compel compliance with the Act and to prevent and undo inflationary tendencies.

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[3] The same report, at p. 25, also states: "Section 205(a) authorizes the Administrator to enforce compliance with the provisions of section 4 of the bill, whenever in his judgment, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4, by making application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision. Upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order or other order shall be granted without bond."

[4] Section 205(e) as amended by the Stabilization Extension Act of 1944, 58 Stat. 632, 640-641; 50 U. S. C. App. § 925(e).

[5] Congress has recognized that this provision for damage suits affords "a remedy at law to persons damaged by having [to] pay unlawfully high prices." S. Rep. No. 931, 77th Cong., 2d Sess., p. 29. It has also been stated that "This action is the people's remedy against inflation. It was written into the statute because the Congress recognized the practical need of this aid to enforcement." S. Rep. No. 922, 78th Cong., 2d Sess., p. 14. The amendment to § 205(e), whereby the Administrator was allowed to sue for damages under prescribed conditions, was said to "close an important gap in the present system of enforcement sanctions." *Id.* Nowhere, however, was there any indication that § 205(e) was intended to withdraw from the equitable jurisdiction recognized by § 205(a) so as to preclude a suit for restitution.

Restitution, which lies within that equitable jurisdiction, is consistent with and differs greatly from the damages and penalt which may be awarded under § 205(e). *Bowles* v. *Skaggs*, sup 821. When the Administrator seeks restitution under § 205(a does not request the court to award statutory damages to the pu chaser or tenant or to pay to such person part of the penalti which go to the United States Treasury in a suit by the Admin istrator under § 205(e). Rather he asks the court to act in th public interest by restoring the status quo and ordering the retur of that which rightfully belongs to the purchaser or tenant. Suc action is within the recognized power and within the highest tra dition of a court of equity. Thus it is plainly unaffected by the provisions of § 205(e).

Nor do we find any other provision of the Act that expressly or impliedly precludes a court from ordering restitution in the exercise of its equity jurisdiction under § 205(a). This is not a situation where a statute has created a right and has provided a special and exclusive remedy, thereby negativing any jurisdiction that might otherwise be asserted. *United States* v. *Babcock*, 250 U. S. 328. And it clearly is not an instance where equity jurisdiction is lacking because of a failure to exhaust prescribed administrative remedies. *Myers* v. *Bethlehem Corp.*, 303 U. S. 41. Rather it is an occasion where Congress has utilized, save in one aspect, the broad equitable jurisdiction that inheres in courts and where the proposed exercise of that jurisdiction is consistent with the statutory language and policy, the legislative background and the public interest.

It follows that the District Court erred in declining, for jurisdictional reasons, to consider whether a restitution order was necessary or proper under the circumstances here present. The case must therefore be remanded to that court so that it may exercise the discretion that belongs to it. Should the court decide to issue a restitution order and should there appear to be conflicting claims and counterclaims between tenants and landlord as to the amounts due, the court has inherent power to bring in all the interested parties and settle the controversies or to retain the case until the matters are otherwise litigated. *Mallow* v. *Hinde*, 12 Wheat. 193.

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 793.—October Term, 1945.

Paul A. Porter, Administrator, Office of Price Administration, Petitioner, *vs.* Warner Holding Company. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[June 3, 1946.]

Mr. Justice Rutledge, dissenting.

In the Emergency Price Control legislation Congress was as much concerned with remedies as with substantive prohibitions.[1] It knew that effectiveness of the latter depended altogether upon the scheme for enforcement. Accordingly, both in the original Act[2] and in later amendments,[3] it covered the matter of remedies in the greatest detail and precision. Those provisions were both jurisdictional and procedural. The general scheme was to confine as narrowly as the Constitution allows the rights of regulated persons to challenge provisions of the Act and regulations; and at the same time to create broad powers for enforcement, by various civil and criminal sanctions. *Yakus* v. *United States*, 321 U. S. 414, dissenting opinion 463. Congress did not take chances, in either respect, with inference or construction. It is not excessive to say that perhaps no other legislation in our history has equalled the Price Control Acts in the wealth, detail, precision and completeness of its jurisdictional, procedural and remedial provisions. *Yakus* v. *United States*, *supra*.

The scheme of enforcement was highly integrated, with the parts precisely fooled and minutely geared. Legal, equitable and criminal sanctions were included. Injured persons' remedies were

[1] See H. Rep. No. 1409, 77th Cong., 2d Sess., 12-13; S. Rep. No. 931, 77th Cong., 2d Sess., 8-9, 25-28; H. Rep. No. 4658, 77th Cong., 2d Sess., 26-27. "Price control which cannot be made effective is at least as bad as no price control at all. It will not stop inflation, and enables those who defy regulation to profit at the expense of the buyers and sellers who unselfishly cooperate in the interests of the emergency." S. Rep. No. 931, *supra*, p. 8.

[2] Section 205, 56 Stat. 23, 33-35.

[3] 58 Stat. 632, 640-641, amending subsections (c), (e), and (f) of § 205 as it was in the original Act and adding subsection (g).

dovetailed with and guarded against overlapping those given the Administrator. He can sue for damages and penalties, after the injured party has failed to do so in the time allowed;[4] to enjoin violation or secure an order for compliance, with temporary and permanent relief;[5] cause institution of criminal proceedings;[6] and require licensing of dealers with power to suspend the license and thus drive out of business.[7] This powerful battery of weapons does not call for reinforcement with armor not provided in the Act. It was equal to all tasks of enforcement which conceivably could arise.

Congress could not have been ignorant of the remedy of restitution. It knew how to give remedies it wished to confer. There was no need to add this one. Nor do I think it did so. It did not give it expressly. I do not think "other order" in the context of §205(a) includes it. For to have conferred it would have put the statutory scheme out of joint.

Section 205(e) gives the overcharged person his remedy, for damages with penalty, for a limited time. Thereafter the exclusive right to sue is the Administrator's, and what he recovers goes into the Federal Treasury, not to the overcharged person. This includes the amount of the overcharge, which is sued for here. These provisions taken together are a statute of limitations on the private right of recovery. Once the time goes by it

[4] Section 205(e), 50 U. S. C. § 925(e). See note 9.

[5] Section 205(a): "Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond." 50 U. S. C. § 925(a).

[6] Section 205(b): "Any person who willfully violates any provision of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment for not more than two years in the case of a violation of section 4 (e) and for not more than one year in all other cases, or to both such fine and imprisonment. Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought." 50 U. S. C. § 925(b). Section 205(e), 50 U. S. C. § 925(e). See Kraus & Bros. v. United States, No. 198, O. T. 1945, decided March 25, 1946, note 4.

[7] Section 205(f), 50 U. S. C. § 925(f).

is cut off and the Government's right takes its place, in vindication of the public interest.[8]

Restitution, as here sought, is inconsistent with both rights. It contemplates return of the unjustly taken enrichment to him from whom it was taken. It is that right the Administrator now seeks to assert. But he does so, I think, in the teeth of the statute. What he recovers is what the Act makes part of a sum it says shall be paid into the Treasury whenever recovered by the Administrator; or into the overcharged person's pocket when recovered by him. And these are mutually exclusive, not alternative, rights of recovery. If the Administrator pays over to the tenants what he recovers in this suit, he will be paying them money which the Act says shall go into the Treasury.[9] Their

[8] Under § 205(e) in the original Act, 56 Stat. 34, the Administrator was entitled to bring a suit for damages and penalties only when the buyer was not entitled to bring such an action. See, e.g., Bowles *v.* Glick Bros. Lumber Co., 146 F. 2d 566. The Act was subsequently amended to provide, as set out in the text, that the Administrator could bring a suit for damages and penalties also when the injured party had not brought such an action within thirty days from the date of the occurrence of the violation. 58 Stat. 640. See note 9. The suit at bar was brought before the passage of the amendment, but that fact is of no significance, since § 205 (e), whether taken in its original or amended form, is inconsistent with the remedy of restitution sought by the Government.

[9] Section 205(e): "If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, *the person who buys* such commodity for use or consumption other than in the course of trade or business *may*, *within one year* from the date of the occurrence of the violation, except as hereinafter provided, *bring an action* against the seller *on account of the overcharge*. *In such action, the seller shall be liable for* reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) *Such amount not more than three times the amount of the overcharge or the overcharges*, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: *Provided, however*, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull [sic] nor the result of failure to take practicable precautions against the occurrence of the violation. *For the purposes of this section the payment or receipt of rent for defense area housing accommodations shall be deemed the buying or selling of a commodity*, as the case may be; *and the word 'overcharge' shall mean the amount by which the consideration exceeds the applicable maximum price*. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and *the buyer thereof fails to institute an action under this subsection within thirty days* from the date of the occurrence of the violation *or is not entitled* for any reason *to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period*. If such action is instituted by the Administrator, *the buyer shall, thereafter be barred from bringing an action*

time for suit has passed and with it their right to recover these amounts. Whether or not the Administrator can sue for these amounts, on behalf of the Government, foregoing the penalties, we are not asked to decide. But we are asked, in effect, to decide that he can take money the Act says shall go into the Treasury and give it to persons whose right to recover it the Act has cut off.

I think the remedy now sought is inconsistent with the remedies expressly given by the statute and contrary to the substantive rights it creates. I think too this is why Congress failed to provide for restitution, indeed cut off that remedy.

This does not imply any restriction upon the creative resources of a court of equity. When Congress is silent in formulating remedies for rights which it has created, courts of equity are free to use these creative resources. But where Congress is explicit in the remedies it affords, and especially where Congress after it has given limited remedies enlarges the scope of such remedies but particularizes them so far as remedies for overcharges are afforded, even courts of equity may not grant relief in disregard of the remedies specifically defined by Congress.

Mr. Justice REED and Mr. Justice FRANKFURTER join in this opinion.

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for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales to the same purchaser prior to the institution of the action in which such judgment was rendered." 50 U. S. C. § 925(e). (Emphasis added.)